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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 24, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

RIN: 3245-AB86

Business Loans, Guaranteed Percentage

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: Public Law 101-162, enacted November 21, 1989 (103 Stat. 1024) (1989 legislation) authorizes SBA to reduce its percentage of guaranty below 70 percent upon the request of the participating lender for a guaranteed business loan in excess of $155,000. This regulation implements that authority.

DATES: *Effective Date:* April 24, 1990. *Comments* may be submitted on or before June 25, 1990.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416. Telephone (202) 653-6574.

SUPPLEMENTARY INFORMATION: The 1989 legislation authorizes SBA, at the lender's request, to reduce the amount of the loan to be guaranteed by SBA. On January 22, 1990, SBA promulgated a final rule (55 FR 2050) which implemented such authority with respect to loans of $155,000 or less. This final rule implements such authority with respect to loans in excess of $155,000. There is an administrative need to promulgate this rule in final form without public notice and comment because it implements effective provisions of law, but SBA will review and consider comments received.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant impact on a substantial number of small entities because whether a lender requests a reduction in the guaranty percentage would not be determinative as to whether the loan is made. SBA certifies that this final rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

This rule does not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This final rule does not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Loan programs/business; Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA amends part 122, chapter I, title 13, Code of Federal Regulations as follows:

PART 122—BUSINESS LOANS

1. The authority citation for part 122 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. Section 122.7-3, paragraph (b) is amended by revising the last sentence to read as follows:

§ 122.7-3 Guaranty loans.

* * * * *

(b) *Guaranty of loans in excess of $155,000.* * * * A Lender's request for less than a 70 percent participation by SBA may be approved by SBA on a case-by-case basis.

* * * * *

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: March 29, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-9391 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 135

[CGD 90-005]

RIN 2115-AD49

Offshore Oil Pollution Compensation Fund Barrel Fee Levy

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: As mandated by recent legislative changes, the Coast Guard is levying a $.03 fee on each barrel of oil produced on the Outer Continental Shelf. This action will permit the Internal Revenue Service to resume collections of the barrel fee from the owners of Outer Continental Shelf crude oil until the Offshore Oil Pollution Compensation Fund balance reaches its new statutory maintenance level of $200,000,000.

EFFECTIVE DATE: The final rule is effective August 1, 1990.

FOR FURTHER INFORMATION CONTACT: Frank A. Martin, Jr., Offshore Oil Pollution Compensation Fund Manager, telephone (202) 267-0535, between 7:30 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The Offshore Oil Pollution Compensation Fund (Fund) was established by and is administered under the provisions of Title III of the Outer Continental Shelf Lands Act Amendments of 1978. The Omnibus Budget Reconciliation Act of 1989 (Reconciliation Act), Public Law 101-239, recently amended title III in two respects.

First, it changed the barrel fee levy rate, from one specified in the statute as a range, to an exact amount. By specifying the exact amount of the levy rate at $0.3, this amendment removed the discretion to levy the fee at any amount between zero and three cents. The levy rate must now be three cents per barrel.

The Reconciliation Act also removed previous agency discretion to maintain the Fund balance at some appropriate level between $100 million (minimum) and $200 million (maximum). By mandating a new single dollar amount as both the minimum and maximum Fund balance, the amendment makes the $200 million Fund balance figure the

level requiring stopping or starting the barrel fee collections. The levy must now be effective, i.e., fees must be collected, whenever the Fund balance is below the new statutory minimum balance of $200,000,000. The April 1, 1990, Fund balance was $155 million.

Current regulations in 33 CFR part 135 are constructed to start and stop collection of the barrel fee by adjusting the levy rate in § 135.103(a). The last adjustment of the levy occurred on December 30, 1988. After determining the Fund balance was sufficient to meet all foreseeable obligations, the Coast Guard published a final rule (53 FR 52995) reducing the levy rate to $.00 per barrel. Our collection agent for the barrel fees, the Internal Revenue Service (IRS), stopped collections effective April 1, 1989.

Previously, the IRS collected barrel fees only when the Coast Guard established a levy rate greater than zero cents per barrel. Under the new statutory provisions, the levy rate must remain at $.03 per barrel, although it need be effective only when the Fund balance is below $200 million. The Coast Guard, therefore, is revising 33 CFR 135.103(a) to establish the $.03 per barrel levy rate and to add a new paragraph (c) stating when they levy rate is to be effective. This rule also provides notice that the IRS will resume collecting the $.03 per barrel fee on the effective date of this rule.

The Coast Guard will advise the IRS whenever the Fund unobligated balance is at or below $200 million, so that the IRS may notify affected oil companies that they are stopping or starting collection of the fees. A new paragraph (d) has been added to § 135.103 to clarify the relationship between the Coast Guard levy of the fee and the IRS collection of it.

Section 135.105 concerning notice before adjustment of the levy is deleted in its entirety, since the Reconciliation Act amendments removed the authority to change the fee levy to any rate other than the required $.03 per barrel.

Regulatory Evaluation

This final rule is considered non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). This rule conforms present regulations to the new statutory barrel fee levy requirements established by the Reconciliation Act. Approximately 80 companies engaged in U.S. Outer Continental Shelf (OCS) crude oil production activities will be affected by the reimposition of the $.03 barrel fee levy. Based upon estimated monthly Fund revenues of $700,000 to $800,000 to be generated by the levy while the Fund is below its new statutory maintenance level, the impact of this final rule is expected to be about $9,600,000 per year.

There are no direct information collection requirements associated with this regulatory action, but there will be an information reporting requirement for the oil companies filing IRS reports which must accompany barrel fee payments when the levy is in effect.

The revisions made by this rule are mandated by the Reconciliation Act, which removed all discretion to control or adjust the barrel fee levy rate and to determine when the barrel fee levy should be effective. The levy rate is now fixed at $.03 per barrel and the present Fund balance makes barrel fee collections mandatory. The rule, therefore, simply brings the regulations into conformance with the amended governing statute. Because there is no discretion to adjust the levy rate, no useful purpose would be served by providing notice and an opportunity to comment before publishing a final rule. The Coast Guard finds that good cause exists under 5 U.S.C. 553(b) to publish this final rule without notice and comment.

Regulatory Flexibility Act

In accordance with paragraph 605(d) of the Regulatory Flexibility Act (94 Stat. 1164), the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Effective Date

The effective date of this rule has been coordinated with the IRS so they may resume collecting barrel fees on August 1, 1990. The effective date meets the statutory requirement that at least 90 days notice in the **Federal Register** be provided before any modification or suspension of the barrel fee. In addition to the notice provided in this rule, the IRS will give direct notice to the affected oil companies concerning the resumption of barrel fee collections.

List of Subjects in 33 CFR Part 135

Administrative practice and procedure, Advertising, Claims, Continental shelf, Insurance, Oil pollution, Reporting and recordkeeping requirements.

In consideration of the foregoing, chapter I of title 33, Code of Federal Regulations, is amended by amending part 135 as follows:

PART 135—OFFSHORE OIL POLLUTION COMPENSATION FUND

1. The authority for part 135 continues to read as follows:

Authority: 43 U.S.C. 1811–24; E.O. 12123, 44 FR 11199; 49 CFR 1.46.

2. Section 135.103 is amended by revising paragraph (a) and by adding paragraphs (c) and (d) to read:

§ 135.103 Levy and payment of barrel fee on OCS oil.

(a) A fee of $.03 per barrel is levied on all oil produced on the OCS and is imposed upon the owner of the oil when such oil is produced.

* * * * *

(c) The barrel fee levied in paragraph (a) of this section applies whenever the unobligated Fund balance is less than $200,000,000.

(d) Payment of the fee levied in paragraph (a) of this section is made in accordance with the fee collection regulations of the IRS at 26 CFR part 301, § 301.9001. Federal government entitlement to royalty oil does not constitute ownership of oil at time of production. The Fund Administrator advises the IRS when the unobligated Fund balance requires starting or stopping the collection of the barrel fee levied in this section, so the IRS may provide appropriate notice to affected owners of OCS oil.

§ 135.105 [Removed]

3. Section 135.105 is removed.

Dated: April 5, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-9361 Filed 4-23-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 151

[CGD 88-100a]

RIN 2115-AC35

Noxious Liquid Substances Lists

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting, as a final rule, the interim rule on Noxious Liquid Substances (NLSs)

which was published in the **Federal Register** on September 29, 1989 (54 FR 39999). This final rule also corrects errors found in the interim rule as published.

DATES: This rule is effective May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION: On December 5, 1988, a notice of proposed rulemaking entitled "Noxious Liquid Substances Lists" was published in the **Federal Register** (53 FR 49016). The Coast Guard received no comments on the proposed rulemaking. A public hearing was not requested and one was not held.

On September 29, 1989, an interim rule entitled "Noxious Liquid Substances Lists" was published in the **Federal Register** (54 FR 39999). The Coast Guard received no letters commenting on the interim rule. A public hearing was not requested and one was not held.

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Related Rulemaking

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing a final rule concerning bulk hazardous material tables in 46 CFR parts 30, 150, 151, and 153 (Coast Guard docket CGD 88–100).

Background

The interim rule requested comments on the new Pollution Categories established by the International Maritime Organization (IMO) after publication of the notice of proposed rulemaking. The Coast Guard received no comments on these additions and is adopting the interim rule as published, with the minor corrections contained in this final rule.

Discussion of Corrections

1. In § 151.47, two commodities are deleted from the list. They are "Alkyl(C9–C17) benzenes" and "Diisopropyl naphthalene". "Alkyl(C9–C17) benzenes", a Category D oil-like pollutant currently listed in § 151.49(b), was added inadvertently to § 151.47 in the interim rule. "Diisopropyl naphthalene", a Category D oil-like pollutant currently listed in § 151.49(b), was added inadvertently to § 151.47 in the notice of proposed rulemaking.

2. A number of spelling errors in §§ 151.47 and 151.49 are corrected.

E.O. 12291 and DOT Regulatory Policies and Procedures

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rulemaking is administrative in nature and merely updates chemical lists by adding substances recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making non-substantive corrections.

Regulatory Flexibility Act

Because the impact of this final rule is expected to be minimal for all effected entities, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)] that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rulemaking contains no information collection or recordkeeping requirements.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that, under § 2.B.2. of Commandant Instruction M16475.1B, the regulations are categorically excluded from further environmental documentation. This rulemaking is an administrative update of lists of chemicals already approved under Coast Guard regulations or international law. A Categorical Exclusion Determination statement has been prepared and is included in the regulatory docket.

List of Subjects in 33 CFR Part 151

Oil pollution, Reporting and record keeping requirements.

Accordingly, the interim rule amending 33 CFR part 151 which was published at 54 FR 39999 on September 29, 1989, is adopted as a final rule with the following changes:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE

1. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 151.47 [Amended]

2. In § 151.47, by removing the entry "Alkyl(C9–C17) benzenes"; by revising the entry "Choline chloride solutions" to read "Choline chloride solution"; by removing the entry "Diisopropyl naphthalene"; by revising the entry "Ethylenediamine tetraacetic acid, tetrasodium salt solution" to read "Ethylenediaminetetraacetic acid, tetrasodium salt solution"; by revising the entry "1-Hexanol" to read "Hexanol"; by revising the entry "Sunflower" under "Oil, edible" to read "Sunflower seed"; by revising the entry "Polypropylene glycols" to read "Polypropylene glycol"; and by revising the entry "Sodium carbonate solutions" to read "Sodium carbonate solution".

§ 151.49 [Amended]

3. In § 151.49(a), by revising the entry "Diethyl benzene" to read "Diethylbenzene"; and by revising the entry "Ethyl benzene" to read "Ethylbenzene".

Dated: April 6, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90–9360 Filed 4–23–90; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Tampa Regulation 90–26]

Safety Zone Regulations; Headwaters of Crystal River in Kings Bay, Florida

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone for the headwaters of the Crystal River in Kings Bay, Florida. The zone is needed to protect boaters and their vessels from the safety hazards associated with the anticipated heavy boating traffic in this area during the holiday weekend of Labor Day. Vessels in the area are to

proceed at "idle speed" during the holiday weekend.

EFFECTIVE DATES: This regulation becomes effective on Friday 31 August 1990 at 6 p.m. It terminates on Tuesday 4 September 1990 at 6 a.m.

FOR FURTHER INFORMATION CONTACT: LT S. P. Metruck, Coast Guard Marine Safety Office, Tampa, FL at (813) 228–2189.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to prevent damage to the vessels involved.

Drafting Information

The drafters of this regulation are LT S. P. Metruck, project officer for the Captain of the Port and LT A. Santos, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

This regulation is required because the Labor Day holiday weekend traditionally results in an increased amount of boating traffic in the headwaters of the Crystal River in Kings Bay, Florida. In order to decrease the hazard to boaters and their vessels all boats transiting the zone must proceed at "idle speed." The entrance areas to the zone shall be marked with buoys indicating " No wake—Idle Speed."

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T0726 is added to read as follows:

§ 165.T0726 Safety Zone: Headwaters of Crystal River in Kings Bay, Florida.

(a) *Location.* The following area is a safety zone: the waters of Kings Bay and the connecting tributaries south and west of the points of land at Crystal Shores on the east and Magnolia Shores on the west wherein the Crystal River meets Kings Bay.

(b) *Effective Dates.* This regulation becomes effective on Friday 31 August 1990 at 6 p.m. It terminates on Tuesday 4 September 1990 at 6 a.m.

(c) *Regulations.* (1) In accordance with the general regulations of § 165.23 of this part, all vessels transiting in this zone must proceed at "idle speed".

Dated: April 5, 1990.

H. D. Jacoby,

Captain, U.S. Coast Guard, Captain of the Port, Tampa, Florida.

[FR Doc. 90–9356 Filed 4–23–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 21

RIN 2900–AD76

Extension of Vocational Programs for Seriously Disabled Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations governing two programs which provide vocational services to seriously disabled veterans receiving pension or individual unemployability benefits from VA. These changes are required because recent legislation extended both programs through January 31, 1992, and revised the criteria for eligibility. The intended effect of these amendments is to make these programs available to an expanded group of veterans in receipt of pension from VA and eliminate the mandatory participation requirement for veterans awarded individual unemployability benefits on or after February 1, 1985.

EFFECTIVE DATE: November 18, 1988, except for § 21.6059(b) which was effective December 31, 1987.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, (202) 233–6496, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, for rules included in §§ 21.6000 through 21.6525; and Robert M. White, (202) 233–3005, Chief, Regulations Staff, Compensation and Pension Service, in regards to §§ 3.341 through 3.343. Inquiries should be addressed to Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: On pages 41110 through 41113 of the **Federal Register** of October 5, 1989, the Department of Veterans Affairs (VA) published proposed regulations amending two programs which provide vocational services to seriously disabled veterans receiving pension or individual unemployability benefits from VA. These proposed regulatory amendments implemented statutory changes which extended both programs through January 31, 1992, and made certain other changes. Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed regulatory amendments. Since no comments, suggestions or objections were received, these rules are adopted as final.

These final rules are retroactively effective. These are interpretive rules which implement statutory provisions. Moreover, VA finds that good cause exists for making these rules, like the sections of the law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These final regulatory amendments do not meet the criteria for a major rule as contained in Executive Order 12291, Federal Regulation. These regulatory amendments will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary certifies that these regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5. U.S.C. 601–612. Pursuant to 5 United States Code 605(b), these final rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification

is that the regulatory amendments only affect the rights of individual VA beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

(The Catalog of Federal Domestic Assistance numbers are 64.109 and 64.116.)

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pension, Veterans.

38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 21, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, and Part 21, Vocational Rehabilitation are amended as follows:

PART 3—[AMENDED]

1. In § 3.341, paragraph (c) is revised and the authority citation is republished to read as follows:

§ 3.341 Total disability ratings for compensation purposes.

* * * * *

(c) *Temporary program for vocational rehabilitation.* Each time a veteran is rated totally disabled on the basis of individual unemployability during the period beginning on February 1, 1985, and ending on January 31, 1992, the Vocational Rehabilitation and Counseling Division will be notified so that an evaluation may be offered to determine whether the achievement of a vocational goal by the veteran is reasonably feasible.

(Authority: 38 U.S.C. 363)

§§ 3.342 and 3.343 [Amended]

2. In § 3.342(c)(1) and § 3.343(c)(2), remove the words "January 31, 1989" where they appear and add, in their place, the words "January 31, 1992".

3. In § 3.342, paragraph (c)(2) is revised to read as follows:

§ 3.342 Permanent and total disability ratings for pension purposes.

* * * * *

(c) *Temporary program of vocational rehabilitation.*

* * * * *

(2) Veterans awarded disability pension prior to February 1, 1985, and veterans age 50 or older who are awarded disability pension during the period beginning on February 1, 1985, and ending on January 31, 1992, are also eligible to apply for participation in vocational rehabilitation training; however such participation is strictly voluntary, and the provisions of paragraph (c)(1) of this section do not apply to such veterans.

(Authority: 38 U.S.C. 524).

PART 21—[AMENDED]

4. Section 21.6001 is revised to read as follows:

§ 21.6001 Temporary vocational training program for certain pension recipients.

This program provides certain veterans awarded pension with an evaluation and, if feasible, with vocational training, employment assistance and other services to enable them to achieve a vocational goal.

(Authority: 38 U.S.C. 524, Pub. L. 100-687).

§ 21.6005 [Amended]

5. In § 21.6005(f), remove the words "paragraph (e)" where they appear and add, in their place, the words "paragraph (f)".

6. In § 21.6005, paragraphs (d), (e), (f), (g), and (h) are redesignated as paragraphs (e), (f), (g), (h), and (i) respectively; paragraphs (a), (b) and (c) are revised; new paragraph (d) is added; and newly designated paragraph (h) is revised to read as follows:

§ 21.6005 Definitions.

(a) *Temporary program.* The term "temporary program" means the program of vocational training for certain pension recipients authorized by section 524, chapter 15, title 38 United States Code.

(Authority: 38 U.S.C. 524, Pub. L. 100-687).

(b) *Program period.* The term "program period" means the period beginning on February 1, 1985, and ending on January 31, 1992.

(Authority: 38 U.S.C. 524(a)(4), Pub. L. 100-687).

(c) *Qualified veteran.* The term "qualified veteran" means—

(1) A veteran awarded disability pension during the program period; or

(2) A veteran who was awarded disability pension prior to the beginning of the program period on February 1, 1985, has been continuously in receipt of pension since that time, and is in receipt of pension on the date his or her claim for assistance under the vocational training program is received by VA.

(Authority: 38 U.S.C. 524(a), Pub. L. 100-687).

(d) *Program participant.* The term "program participant" means a qualified veteran as defined in paragraph (c) of this section who, following an evaluation in which VA finds achievement of a vocational goal is reasonably feasible for the veteran, elects to participate in a vocational training program.

(Authority: 38 U.S.C. 524(a), Pub. L. 100-687).

* * * * *

(h) *Job development.* The term "job development" means comprehensive professional services to assist the individual veteran to actually obtain a suitable job, and not simply the solicitation of jobs on behalf of the veteran.

(Authority: 38 U.S.C. 524(b)(3)).

* * * * *

7. In § 21.6015, paragraphs (c), (d), and (e) are redesignated as new paragraphs (d), (e), and (f) respectively; the heading and the authority citation for paragraph (a) are revised; paragraph (b) is revised and new paragraph (c) is added to read as follows:

§ 21.6015 Claims and elections.

(a) *Claims by veterans under age 50 for whom participation in an evaluation is required.*

* * * * *

(Authority: 38 U.S.C. 524(b); Pub. L. 100-687).

(b) *Claims by qualified veterans for whom participation in an evaluation is not required.* Qualified veterans in the following categories will be provided an evaluation if they request assistance under the temporary program, and are found to have good employment potential. These veterans include:

(1) Veterans age 50 and more who are awarded pension during the program period;

(2) Veterans awarded pension prior to the beginning of the program period on February 1, 1985, who meet the conditions contained in § 21.6005(c) of this part.

(Authority: 38 U.S.C. 524(b), Pub. L. 100-687).

(c) *Filing a claim.* A veteran in one of the categories identified in paragraph (b) of this section must file a claim in the form prescribed by VA in order to be considered for an evaluation of his or her ability to achieve a vocational goal through participation in this temporary program. The veteran's claim is considered a request for both the evaluation, and if achievement of a vocational goal is found reasonably feasible, for participation in the vocational training program.

(Authority: 38 U.S.C. 524, Pub. L. 100-687).

8. In § 21.6021, paragraph (a) and its authority citation are revised to read as follows:

§ 21.6021 Nonduplication—38 U.S.C. Chapters 30, 31, 32, 34 and 35.

(a) *Election between this temporary program and chapter 31 required.* A service-disabled veteran awarded VA pension who is offered a vocational training program under 38 U.S.C. chapter 15 and is also eligible for such assistance under chapter 31, must elect which benefit he or she will receive. The veteran may reelect at any time if he or she is still eligible for the benefit desired.

(Authority: 38 U.S.C. 524(b)(2); Pub. L. 100–687).

* * * * *

9. In § 21.6040, paragraphs (a)(1) and (c) and the authority citations for paragraphs (b) and (c) are revised to read as follows:

§ 21.6040 Eligibility for vocational training and employment assistance.

(a) *Basic eligibility requirements.*
* * *

(1) The veteran is a qualified veteran as described in § 21.6005(c) of this part
* * * * *

(b) * * *

(Authority: 38 U.S.C. 524(b); Pub. L. 100–687).

(c) *Eligibility if pension is terminated.* A qualified veteran for whom a program of vocational training has been found reasonably feasible shall remain eligible for the temporary program, subject to the rules of this subpart and section 524 of 38 U.S.C. ch. 15, even if his or her pension award is subsequently terminated, except when the veteran's award of VA pension was the result of fraud or administrative error.

(Authority: 38 U.S.C. 524(a); Pub. L. 100–687).

§ 21.6042 [Amended]

10. a. In § 21.6042 (b) and (d), add the following to the authority citation: "; Pub. L. 100–687".

b. In § 21.6042 in the introductory text of paragraph (a), paragraph (a)(1) and paragraph (b), remove "1989", and add in its place, "1992".

c. In § 21.6042(d) remove the words "January 31, 1994", and add in their place, the words "January 31, 1997".

§ 21.6050 [Amended]

11. In § 21.6050(b), (c), (d), and (e), add the following to the authority citation: "; Pub. L. 100–687".

12. In § 21.6050, paragraph (d)(1)(ii) is removed; the heading for paragraph (b) and the first sentence of paragraph (b), the first sentence of paragraph (c)(1), paragraph (c)(2), (d)(2), and paragraph (e) are revised to read as follows:

§ 21.6050 Participation of eligible veterans in an evaluation.

* * * * *

(b) *Evaluating other qualified veterans.* An evaluation shall be accorded each qualified veteran as described in § 21.6005(c) of this part who seeks to become a program participant provided VA first determines the veteran has good potential for achieving employment. * * *

(c) *Notice to eligible veteran.* (1) A qualified veteran under age 50 awarded pension during the program period for whom participation in an evaluation is not clearly precluded by reasons beyond the veteran's control shall be sent a notice at the time he or she is awarded a pension. * * *

(2) A qualified veteran age 50 or older awarded pension during the program period will be informed of the provisions of this temporary program and the procedure for requesting an evaluation.
* * * * *

(d) *Scheduling the evaluation.* * * *

(2) Other qualified veterans identified in § 21.6005(c) who are found to have good employment potential under § 21.6054.
* * * * *

(e) *Followup of qualified veterans who do not complete an evaluation.* The case of each qualified veteran under age 50 awarded pension during the program period for whom an evaluation was not scheduled or who does not complete an evaluation shall be reviewed for followup action by Vocational Rehabilitation and Counseling (VR&C) staff as provided in §§ 21.197(c)(4) and 21.198(d).
* * * * *

13. In § 21.6054, the section heading, the first sentence of paragraph (a), and the authority citation for paragraph (a) are revised to read as follows:

§ 21.6054 Criteria for determining good employment potential.

(a) *Determining good employment potential.* Before scheduling an evaluation of feasibility to pursue a vocational goal for a qualified veteran under § 21.6005(c)(2), VA will first determine whether the veteran has good potential for achieving employment if provided a vocational training or employment program. * * *

(Authority: 38 U.S.C. 524(a)(2); Pub. L. 100–687).
* * * * *

§ 21.6059 [Amended]

14. a. In § 21.6059 (a) and (b) introductory text remove the numbers "2,500", and add in their place, the numbers "3,500".

§ 21.6059 [Amended]

b. In § 21.6059(a), (b) and (c), add the following to the authority citation: "; Pub. L. 100–227".

15. In § 21.6059 paragraph (b)(1) is removed, and paragraphs (b)(2) and (b)(3) are redesignated as paragraphs (b)(1) and (b)(2) respectively; paragraphs (c)(1) and (c)(2) are revised to read as follows:

§ 21.6059 Limitations on the number of evaluations.

* * * * *

(c) *Cases not counted as evaluations.*
* * *

(1) The veteran under age 50 awarded pension during the program period is unable to participate for reasons beyond his or her control;

(2) Review of available information does not indicate a good potential for employment of other qualified veterans.
* * * * *

§§ 21.6511, 21.6513, 21.6517, and 21.6525 [Removed and Reserved]

16. a. In part 21, subpart J, §§ 21.6511, 21.6513, 21.6517 and 21.6525 are removed and reserved.

Subpart J [Authority Revised]

b. In part 21, subpart J, the authority citation is revised to read as follows:

Authority: Pub. L. 98–543, sec. 111; 38 U.S.C. 363; Pub. L. 100–687, sec. 1301.

17. In § 21.6501, the heading and authority citation for paragraph (b) are revised to read as follows:

§ 21.6501 Overview.

* * * * *

(b) *Chapter 31 evaluations.* * * *

(Authority: 38 U.S.C. 363; Pub. L. 100–687).
* * * * *

§ 21.6503 [Amended]

18. In § 21.6503(a), remove the words "January 31, 1989", and add in their place, the words "January 31, 1992".

19. Section 21.6505 is revised to read as follows:

§ 21.6505 Participation in the temporary program

Participation in this temporary program of trial work periods and vocational rehabilitation is limited to qualified veterans.

(Authority: 38 U.S.C. 363(a)(2)(A)).

20. Section 21.6509 is revised to read as follows:

§ 21.6509 Notice to qualified veterans

(a) At the time notice is provided to a qualified veteran of an award of an IU rating, VA shall provide the veteran with an additional statement. These statements shall contain the following information:

(1) Notice of the provisions of 38 U.S.C. 363;

(2) Information explaining the purposes and availability of, as well as eligibility requirements and procedures for pursuing a vocational rehabilitation program under Chapter 31; and

(3) A summary description of the scope of services and assistance available under that chapter.

(Authority: 38 U.S.C. 363(c)(1)).

(b) *Opportunity for evaluation.* After providing the notice required under paragraph (a) of this section, VA shall offer the veteran the opportunity for an evaluation under § 21.50 of this part.

(Authority: 38 U.S.C. 363(c); Pub. L. 100–687).

(c) *Evaluation.* The term "evaluation" hereinafter shall be understood to mean the same evaluation accorded in an "initial evaluation" and an "extended evaluation" as those terms are described in §§ 21.50 and 21.57 of this part.

(d) *Responsible staff member.* The evaluation or reevaluation will be provided by a counseling psychologist in the Vocational Rehabilitation and Counseling (VR&C) Division.

(Authority: 38 U.S.C. 363(c)).

21. In § 21.6515 paragraph (b) and its authority citation are revised to read as follows:

§ 21.6515 Formulation of rehabilitation plan.

* * * * *

(b) *Existing plan.* If the veteran already has undertaken a rehabilitation program under Chapter 31, a new plan shall not be developed unless circumstances indicate that the existing plan should be modified or replaced.

(Authority: 38 U.S.C. 363(c); Pub. L. 100–687).

22. In § 21.6519 paragraph (c) is revised to read as follows:

§ 21.6519 Eligibility of qualified veterans for employment and counseling services.

* * * * *

(c) *Veteran elects counseling, placement and postplacement services.* If a qualified veteran elects not to undertake the IWRP and is otherwise eligible for counseling, placement and postplacement services under 38 U.S.C. 1504(a)(2) and (5), he or she may be provided those services.

(Authority: 38 U.S.C. 363(b)).

§ 21.6523 [Amended]

23.a. In § 21.6523(a) remove the words "January 31, 1989", and add in their place, the words "January 31, 1992".

b. In § 21.6523, add the following to the authority citation: "; Pub. L. 100–687".

[FR Doc. 90–8693 Filed 4–23–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–3757–9]

Final Authorization of State Hazardous Waste Management Program; Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), provides for the U.S. Environmental Protection Agency (EPA) to grant authorization to State agencies to operate their hazardous waste management programs in lieu of the Federal program. The State of Kansas has applied for final authorization of revisions to its previously authorized hazardous waste management program under RCRA. EPA has reviewed the Kansas application and has made a decision, subject to public review and comment, that the Kansas hazardous waste management program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve the State's hazardous waste managment program revisions. Kansas' application for program revisions is available for public review and comment.

DATES: Final authorization for Kansas shall be effective June 25, 1990, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on the Kansas program revisions application must be received by the close of business May 24, 1990.

ADDRESSES: Copies of the Kansas program revision application are available for inspection and copying during normal business hours at the following addresses: Bureau of Waste Management, Kansas Department of Health and Environment, Forbes Field, Topeka, Kansas 66620, 913–296–1600; U.S. EPA Headquarters Library, PM 211A, 401 M Street SW., Washington, DC 20460, 202–382–5926; U.S. EPA Region VII, Library (Ms. Brenda Ward), 726 Minnesota Avenue, Kansas City, Kansas 66101, 913–236–2828. Written comments should be sent to Daniel J. Wheeler, RCRA Branch, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913–236–2852, (FTS) 757–2852.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, RCRA Branch, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; 913–236–2852, (FTS) 757–2852.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of RCRA (42 U.S.C. 6926 et. seq.) allows EPA to authorize State hazardous waste managment programs to operate in the States in lieu of the Federal hazardous waste program. This is done when a state submits to EPA a request for authorization demonstrating that the state program is equivalent to the Federal program.

Revisons to State hazardous waste programs are necessary whenever Federal or State statutory or regulatory authority is modified or when certain other changes occur.

This is because states with final authorization under section 3006(b) of RCRA have continuing obligations to maintain state programs that are equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–271 and 124 that require corresponding changes in the state program in order for the state to maintain its authorization.

B. Kansas

In order to be authorized to operate its own hazardous waste management program, the State of Kansas submitted, on July 16, 1984, an application to administer the basic RCRA program. On October 3, 1985, EPA published a **Federal Register** rulemaking granting final authorization, effective October 17, 1985, to Kansas for the RCRA base program (See 50 FR 40377.)

To meet its obligation to maintain a hazardous waste management program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste management program, Kansas has submitted a request to be authorized for additional RCRA authorities which were not included in the base program request or which have

been promulgated by EPA since the Kansas base program approval. The State submitted its request for these additional program approvals on September 14, 1988.

EPA has reviewed the Kansas application with respect to the requirements for state authorization contained in 40 CFR part 271 and determined that its hazardous waste management program revision satisfies all of the requirements to qualify for final authorization for the additional program modifications. Consequently, EPA is granting final authorization for the additional program modifications to Kansas. Today's decision is being published as an "immediate final rule" in accordance with the provisions of 40 CFR 271.21(b)(3). The public may submit written comments on this immediate final rule until the date noted in the "*Dates*" section of this document. Approval of the Kansas program revision shall become effective 60 days from today unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final rule or (2) a notice containing a response to comments which either affirms that the immediate final rule takes effect or reverses the decision.

Kansas has adopted by reference all of the required Federal Regulations through November 1, 1987, as State requirements. There are some areas in which the State has adopted Federal requirements but is not requesting authorization for those requirements at this time. Also, the State has adopted some provisions which, being broader in scope than the Federal requirements, are not included in the Federally enforceable State requirements being approved today.

Those specific RCRA program portions which are being authorized today are listed in the table below by their descriptive names, **Federal Register** citations and Code of Federal Regulations (CFR) citations along with the State of Kansas citations describing the State authorities to carry out these responsibilities. The CFR citations refer to title 40 of the CFR and list the appropriate parts of title 40, except for the Availability of Information provisions which are required by section 3006 of RCRA as amended by the 1984 Hazardous and Solid Waste Amendments (HSWA). Certain portions of the information availability requirements are self implementing, therefore those references are to the law itself rather than to any implementing regulations.

RCRA provision	40 CFR citation	Kansas citation	
		Statute	Regulation
National Uniform Manifest—March 20, 1984 (49 FR 10500)			
Hazardous Waste Management System	Part 260	65-3431	28-31-2
General Standards (except subpart E)	Part 262	65-3431	28-31-4
Appendix to part 262	Part 262	65-3431	28-31-4
Availability of Information—RCRA Section 3006(f) (HSWA November 8, 1984)			
Procedural Requirements	Part 2	45-217	NA
	5 U.S.C. 552	45-218	
		45-222	
Substantive Requirements	5 U.S.C. 552	45-221	NA
RCRA Section	3006(f)	45-218	
Confidential Business Information	Parts 2, 270, 271	65-3447	
Oversight State Programs Hazardous Components	Part 271	65-3431	
Household Waste—November 13, 1984 (49 FR 44980)			
Identification and Listing of Hazardous Waste	Part 261	65-3430	28-31-3
		65-3431	
Interim Status Standards Applicability—November 21, 1984 (49 FR 46095)			
Interim Standards for Owners and Operators of TSDs	Part 265	65-3431	28-31-8
Corrections to Test Methods Manual—December 4, 1984 (49 FR 47391)			
Hazardous Waste Management System	Part 260	65-3430	28-31-2
		65-3431	28-31-3
Permitting Requirements	Part 270	65-3431	28-31-9
Satellite Accumulation—December 20, 1984 (49 FR 49572)			
Generator Standards	Part 262	65-3431	28-31-4
Redefinition of Solid Waste—January 4, 1985 (50 FR 614)			
Hazardous Waste Management System	Part 260	65-3431	28-31-2
		65-3430	28-31-3
Identification and Listing of Hazardous Waste (except part 261.5)	Part 261	65-3431	28-31-3
Facility Requirements	Part 264	65-3431	28-31-8
Facility Interim Standards	Part 265	65-3431	28-31-8
Specific Management Standards	Part 266	66-3431	28-31-8
Interim Standards for Owners and Operators for Landfills—April 23, 1985 (50 FR 16044)	Part 265	65-3431	28-31-8
Closure, Post-Closure and Financial Responsibility Requirements—May 2, 1986 (51 FR 16422)			
Hazardous Waste Management System	Part 260	65-3430	28-31-2
Facility Requirements	Part 264	65-3431	28-31-8
Facility Interim Status Requirements	Part 265	65-3431	28-31-8
Permitting Requirements	Part 270	65-3431	28-31-9
Listing of Spent Pickle Liquor (K062)—May 28, 1986 (51 FR 19320)			
Identification and Listing of Hazardous Waste	Part 261	65-3430	28-31-3
		65-3431	
Radioactive Mixed Wastes—July 3, 1986 (51 FR 24504)			
Hazardous Waste Management System	Part 260	65-3430	28-31-3
		65-3431	
Liability Coverage, Corporate Guarantee—July 11, 1986 (51 FR 25350)			
Standards for Owners and Operators of TSDs	Part 264	65-3431	28-31-8
Interim Standards for Owners and Operators of TSDs	Part 265	65-3431	28-31-8

RCRA provision	40 CFR citation	Kansas citation	
		Statute	Regulation
Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents—August 6, 1986 (51 FR 28296)			
Identification and Listing of Hazardous Waste	Part 261	65-3431	28-31-3
	App. VIII	65-3430	

Availability of information provisions were the subject of a compliance schedule published March 11, 1987 (52 FR 7412) allowing the State until June 30, 1987, for adoption, with an expectation that the State would submit an authorization request for it by September 30, 1987. The State met this schedule.

The State will assume lead responsibility for issuing permits for those program areas authorized today. For those HSWA provisions for which the State is not authorized, EPA will retain lead responsibility. For those permits which will now change to State lead from EPA, EPA will transfer copies of any pending applications, completed permits or pertinent file information to the State within thirty days of the effective date of this authorization. EPA will be responsible for enforcing the terms and conditions of Federally issued permits while they remain in force. EPA will also be responsible for enforcing the terms and conditions of RCRA permits regarding HSWA provisions until the State has the authority to address the HSWA provisions. The State has agreed to review all State issued permits and to modify or reissue them as necessary to require compliance with the currently approved State law and regulations. When the State reissues Federally issued permits as State permits, EPA will rely on the State to enforce them, with the exception of those HSWA provisions not yet authorized.

C. Decision

I conclude that the Kansas application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Kansas is granted final authorization to operate its hazardous waste management program, as revised. Kansas now has responsibility for the permitting of treatment, storage and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. Kansas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013 and 7003 of RCRA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of the Kansas program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Penalties, Reporting and recordkeeping requiremens.

Authority: Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended [42 U.S.C. 6912(a), 6926, 6974(b)].

Dated: June 8, 1989.

Morris Kay,

Regional Administrator.

Note: This document received for publication in the **Federal Register** on April 19, 1990.

[FR Doc. 90-9453 Filed 4-23-90; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30, 150, 151, and 153

[CGD 88-100]

RIN 2115-AC35

Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting, as a final rule, the interim rule on the carriage of bulk hazardous materials which was published in the **Federal Register** on September 29, 1989 (54 FR 40005). This final rule also corrects errors found in the interim rule as published.

EFFECTIVE DATE: This rule is effective May 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267-1577.

SUPPLEMENTARY INFORMATION: On December 5, 1988, a notice of proposed rulemaking entitled "Bulk Hazardous Materials" was published in the **Federal Register** (53 FR 49018). The Coast Guard received three letters commenting on the proposed rulemaking. A public hearing was not requested and one was not held.

On September 29, 1989, an interim rule entitled "Bulk Hazardous Materials" was published in the **Federal Register** (54 FR 40005). On October 26, 1989, a notice entitled "Bulk Hazardous Materials; Correction" was published in the **Federal Register** (54 FR 43584) to add a paragraph inadvertently omitted by the publisher. The Coast Guard received no letters commenting on the interim rule. A public hearing was not requested and one was not held.

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Related Rulemaking

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing a final rule concerning the noxious liquid substances lists in 33 CFR 151.47 and 151.49 (Coast Guard docket CGD 88-100a).

Background

The interim rule requested comments on all changes to the rule made since the notice of proposed rulemaking (NPRM) was published. The changes identified in the interim rule resulted from public

comments received on the NPRM, new carriage requirements and Pollution Categories established by the International Maritime Organization (IMO), and an investigation of a recent tank barge accident. The Coast Guard received no comments on these changes and is adopting the interim rule as published, with the minor corrections contained in this final rule.

Discussion of Corrections

The Coast Guard is correcting the following errors identified since the date of publication of the interim rule.

1. In part 30, Table 30.25–1, the "*(C2–C3)*" in "*Polyalkylene(C2–C10) glycol monoalkyl(C2–C3) ethers*" under "Brake fluid mixtures" is corrected to read "*C1–C4)*"; the entry "Diisopropylbenzene" is corrected to read "Diisopropylbenzene (*all isomers*)"; the entry "Nonyl methacrylate" is corrected to read "Nonyl methacrylate *monomer*"; the Pollution Category for the entry "Rosin" under "Oil, misc." is corrected to read "B" instead of "A"; and the entry "White spirit *see White spirit (low(15–20%) aromatic*)" is corrected to read "White spirit, *see* White spirit (low 15–20%) aromatic)".

2. In part 150, Table II, Group 30, Olefins, and Group 31, Paraffins, several entries and the heading for Group 31, appearing in the NPRM, were missing from the interim rule. These are restored by the final rule. For Group 30, they are the entries "Styrene", "Tetradecene", "Tridecene", "Triisobutylene", "Tripropylene", "Turpentine", and "Undecene". For Group 31, they are the group heading, "31. Paraffins", and the entries "Butane", "Cycloaliphatic resins", "Cycloheptane", "Cyclohexane", and "Decane".

3. In Table 151.05, part 151, for the entry identified as "Ammonia, anhydrous/Atmos./Low", the Tank internal inspection period is corrected to read "8" instead of "G". The interim final rule intended to change the tank inspection period only for the entry identified as "Ammonia, anhydrous/ Press./Amb.". However, the entry identified as "Ammonia, anhydrous/ Atmos./Low" was changed inadvertently at the same time. The final rule corrects this.

4. In Table 2, part 153, the Pollution Category "@III" is included for the entry "Calcium lignosulfonate solution" under "Lignin liquor (free alkali content, 1% or less)". The entry "*Urea, Ammonium nitrate solution (2% or less NH_3), see*" is corrected to read "Urea, Ammonium nitrate solution (2% or less NH_3), *see*"; and the entry "T3Urea, Ammonium phosphate solution, see" is corrected to read "Urea, Ammonium phosphate solution, *see*".

5. In addition, a number of editorial corrections are made to the format of existing entries in the various lists and tables.

E.O. 12291 and DOT Regulatory Policies and Procedures

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary.

This rulemaking is administrative in nature and merely updates chemical tables by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making other non-substantive editorial changes and corrections.

Regulatory Flexibility Act

Because the impact of this final rule is expected to be minimal for all effected entities, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of the final rule and concluded that, under § 2.B.2 of Commandant Instruction M16475.1B, the final rule is categorically excluded from further environmental documentation. This rulemaking is an administrative update of tables listing chemicals already approved under Coast Guard regulation or international law. A Categorical Exclusion Determination statement has been prepared and is included in the regulatory docket.

List of Subjects

46 CFR Part 30

Administrative practice and procedure, Barges, Foreign relations, Hazardous materials transportation, Penalties, Tank vessels.

46 CFR Part 150

Hazardous materials transportation, Marine safety.

46 CFR Part 151

Barges, Flammable materials, Hazardous materials transportation, Marine safety, Tank vessels.

46 CFR Part 153

Barges, Hazardous materials transportation, Marine safety, Tank vessels.

Accordingly, the interim rule amending 46 CFR parts 30, 150, 151, and 153 which was published at 54 FR 40005–40056 on September 29, 1989, is adopted as a final rule with the following changes:

PART 30—GENERAL PROVISIONS

1. The authority citation for part 30 continues to read as follows:

Authority: 46 U.S.C. 3507, 3703; 49 U.S.C. 1804; 49 CFR 1.46.

§ 30.25–1 [Amended]

2. In § 30.25–1, Table 30.25–1 is amended by removing from the entry "Brake fluid base mixtures" the words "*glycol monoalkyl(C2–C3) ethers*" and adding, in their place, the words "*glycol monoalkyl(C1–C4) ethers*"; by revising the entry "Diisopropylbenzene" to read "Diisopropylbenzene (*all isomers*)"; by revising the entry "Nonyl methacrylate" to read "Nonyl methacrylate *monomer*"; in the "Pollution Category" column for the entry "Rosin" under "Oil, misc.", by removing the letter "A" and adding, in its place, the letter "B"; and by revising the entry "White spirit *see White spirit (low(15–20%) aromatic*)" to read "White spirit, *see* White spirit (low(15–20%) aromatic)".

PART 150—COMPATIBILITY OF CARGOES

3. The authority citation for part 150 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

Table II [Amended]

4. In Table II, under Group 30, Olefins, by removing the entry "Propylene trime" and adding, in its place, the entry "Propylene trimer" and by indenting the

entry "Paraffin" following the entry "Waxes"; under Group 34, Esters, by indenting the entry "Carnauba" following the entry "Waxes"; under Group 43, Miscellaneous Water Solutions, by removing the entry "2,4-Dichlorophenoxy acetic acid, Diethanolamine salt solution" and adding, in its place, the entry "2,4-Dichlorophenoxyacetic acid, Diethanolamine salt solution" and by removing the entry "Diethanolamine salt of 2,4-Dichlorophenoxy acetic acid solution" and adding, in its place, the entry "Diethanolamine salt of 2,4-Dichlorophenoxyacetic acid solution"; and by adding the following between the entries "Propylene trimer" and "Dodecane" under Group 30, Olefins to restore missing entries, including the heading and entries for Group 31, Paraffins:

Table II—Grouping of Cargoes

* * * * *

30. Olefins

* * * * *

Styrene
Tetradecene
Tridecene
Triisobutylene
Tripropylene
Turpentine
Undecene

Group 31. Paraffins
Butane
Cycloaliphatic resins
Cycloheptane
Cyclohexane
Cyclopentane
Decane

* * * * *

Appendix I [Amended]

5. In Appendix I(b), by removing the words "2,4-Dichlorophenoxyacetic acid solution, Dimethylamine salt (0)" and adding, in their place, the words "2,4-Dichlorophenoxyacetic acid, Dimethylamine salt solution (0)".

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

6. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903(b), 46 U.S.C. 3703; 49 CFR 1.46.

§ 151.05 [Amended]

7. In Table 151.05, under the entry "Ammonia, anhydrous/Atmos./Low", by removing the letter "C" from the "Tank internal inspect. period-years" column and adding, in its place, the numeral "8".

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

8. The authority citation for part 153 continues to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 1804. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903(b).

Table 2 [Amended]

9. In Table 2, under the entry "Lignin liquor (free alkali content, 1% or less) including: Calcium lignosulfonate solution", by adding "@III" to the "Pollution Category" column; by removing the entry "*Urea, Ammonium nitrate solution (2% or less NH_3)*, see Ammonium nitrate, Urea solution (2% or less NH_3)" and adding, in its place, the entry "Urea, Ammonium nitrate solution (2% or less NH_3), *see also* Ammonium nitrate, Urea solution (2% or less)"; by removing the entry "*Urea, Ammonium phosphate solution, see* Ammonium phosphate, Urea solution" and adding, in its place, the entry "Urea, Ammonium phosphate solution, *see also* Ammonium phosphate, Urea solution"; and by adding at the end of the "Explanation of Symbols" section following Table 2 and words "@-The NLS category has been assigned by the U.S. Coast Guard, in absence of one assigned by the IMO. The category is based upon a GESAMP Hazard Profile or by analogy to a closely related product having an NLS assigned."

Dated: April 6, 1990.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 90-9447 Filed 4-23-90; 8:45 am]

BILLING CODE 4910-14-M

Proposed Rules

Federal Register
Vol. 55, No. 79
Tuesday, April 24, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Corp Insurance Corporation

7 CFR Part 400

[Doc. No. 7531S]

General Administrative Regulations; Corp Insurance; Non-Standard Underwriting Classification System (NCS)

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add a new subpart 0 to part 400 in chapter IV of title 7, Code of Federal Regulations to be known as the Non-Standard Underwriting Classification System Regulations (7 CFR part 400, subpart 0), effective for the 1991 and succeeding crop years. The intended effect of this rule in to set forth procedures and requirements for non-standard assigned yields and premium rates apart from yields and rates prescribed by standard actuarial tables.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than May 24, 1990, to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulations 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1994.

David W. Gabriel, Acting Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

County actuarial tables issued from year to year by the Corporation prescribed standard crop insurance premium rates and yields. An evaluation of the accuracy of those standard actuarial tables has identified a relatively small number of crop insurance contracts (abour 6 percent) that have accounted for about 28 percent of losses.

While the occurance of a small number of extraordinary losses is a statistically normal expectation, the Corporation recognizes the limitations standard actuarial tables have in prescribing accurate premium rates and assigned yields for such instances and the peril those limitations pose to overall program soundness.

FCIC proposes to establish a Non-Standard Underwriting Classification System to address extraordinary situations. Requirements for Non-Standard Classification are prescribed including both frequency and degree of losses. Procedures for detemining Non-Standard assigned yields and premium rates are included. Periodic reviews of Non-Standard determinations by the Corporation are required as are reviews at the request of affected persons. Appeal rights are reaffirmed and further clarified as they relate to these regulations.

Written comments are solicited by FCIC for 30 days following publication of this rule in the **Federal Register**. Written comments, data, and opinions on the rule should be sent to Peter F. Cole, Secretary, Office of the Manager, Federal Crop Insurance Corporation, room 4090, South Agriculture Building, Washington, DC 20250. All comments received pursuant to this notice will be available for public inspection and copying in the office of the Manager at the above address during regular business hours, Monday through Friday.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to amend the General Administrative Regulations, effective for the 1991 and succeeding crop years, to add a new subpart 0 to part 400 of chapter IV of title 7 of the Code of Federal Regulations, to be known as 6 CFR part 400, General Administrative Regulations; subpart 0, Non-Standard Underwriting Classification System, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart 0—Non-Standard Underwriting Classification System Regulations for the 1991 and Succeeding Crop Years

Sec.

Sec.
400.307 Discontinuation of participation.
400.308 Notice of Nonstandard Classification.
400.309 Requests for reconsideration.
Authority: 7 U.S.C. 1506, 1516.

Subpart 0—Non-Standard Underwriting Classification System Regulations for the 1991 and Succeeding Crop Years

§ 400.301 Basis, purpose, and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (5 U.S.C. 1501 *et seq.*) (the Act), to prescribe the procedures for nonstandard determinations and the assignment of assigned yields and/or premium rates in conformance with the intent of section 508 of the Act (7 U.S.C. 1508). These regulations are applicable to all policies of insurance insured or reinsured by the Corporation under the Act.

§ 400.32 Definitions.

(a) *Act*—means Federal Crop Insurance Act as amended (7 U.S.C.1501 *et seq.*).

(b) *Actively engaged in farming*—means that a person in return for a share of profits and losses makes a contribution to the production of an insurable crop of capital, equipment, and personal labor, and/or personal management.

(c) *Actual Yield*—means total harvested production of a crop divided by the number of acres on which the crop was planted. For insured acres, actual yield is the total production to count as defined in the insurance policy, divided by insured acres.

(d) *Assigned yield*—means units of crop production per acre administratively assigned by the Corporation for the purpose of determining insurance coverage.

(e) *Base period*—means the 10 preceding crop years through the next to last crop year.

(f) *Corporation*—means the Federal Crop Insurance Corporation.

(g) *Cumulative earned premium rate*—is the total premium earned for all years in the base period, divided by the total liability for all years in the base period with the result expressed as a percentage.

(h) *Cumulative loss ratio*—means the ratio of total indemnities to total earned premiums during the base period expressed as a decimal.

(i) *Earned premium rate*—means premium earned divided by liability and expressed as a percentage.

(j) *Entity*—means a person as defined in this subpart other than an individual.

(k) *Insurance experience*—means premium earned, indemnities paid, and other data resulting from a crop insurance policy insured or reinsured by the Corporation.

(l) *Loss ratio*—means the ratio of indemnity to earned premium expressed as a decimal.

(m) *Person*—means an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State or a political subdivision, or agency of a state.

(n) *Substantial beneficial interest*—means an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests which are owned directly or indirectly through such means as ownership of shares in a corporation which owns the interest will be taken into consideration.

§ 400.303 Initial selection criteria.

(a) Nonstandard Classification procedures in the subpart initially apply when both of the following insurance experience criteria have been met:

(1) Three (3) or more indemnified losses which exceed earned premium during the base period; and

(2) The natural logarithm of cumulative earned premium rate multiplied by the square root of the cumulative loss ratio equals 2.00 or greater. The minimum standard of 2.00 may be increased provided the increased standard applies to all insurance experience in the same county.

(b) Selection criteria may be applied on the basis of insurance experience of a person, insurable acreage, or the combination of both.

(1) Insurance experience of a person will include:

(i) Insurance experience of the person;

(ii) Insurance experience of other insured entities in which the person had substantial beneficial interest if the person was actively engaged in farming of the insured crop by virtue of the person's interest in those insured entities;

(iii) Insurance experience of a spouse and minor children if the person is an individual and the spouse and minor children are considered the same as the individual under § 400.306.

(2) Insurance experience of insured acreage includes all insurance experience during the base period resulting from the production of the insured crop on the acreage.

(3) Where insurance experience is based on a combination of person and insured acreage, the insurance experience will include the experience of the person as defined in (b)(1) of this section only on the specific insured acreage during the base period.

§ 400.304 Nonstandard Classification determinations.

(a) Nonstandard Classification determinations can affect a change in assigned yields, premium rates, or both from those otherwise prescribed by the insurance actuarial tables.

(b) Changes of assigned yields based on insurance experience of insured acreage (or of a person on specific insured acreage) will be based on the simple average of available actual yields from the insured acreage during the base period.

(c) Changes of assigned yields based on insurance experience of a person without regard to any specific insured acreage will be determined by an adjustment factor calculated by multiplying excess loss cost ratio by loss frequency and subtracting that product from 1.00 where:

(1) Excess loss cost ratio is total indemnities divided by total liabilities for all years of insurance experience in the base period and the result of which is then reduced by the cumulative earned premium rate, expressed as a decimal, and

(2) Loss frequency is the number of crop years in which an indemnity was paid divided by the number of crop years in which premiums were earned during the base period.

(d) Changes of premium rates will be made to reflect premium rates that would have resulted in insurance experience during the base period with a loss ratio of 1.00 but:

(1) A higher loss ratio than 1.00 may be used for premium rate determinations provided that the higher loss ratio is applied uniformly in a county; and

(2) If a Nonstandard Classification change has been made to current assigned yields, insurance experience during the base period will be adjusted to reflect the affects of changed assigned yields before changes of premium rates are calculated based on that experience.

(e) Once selection criteria have been met in any year, Nonstandard Classification adjustments will be made from year to year until no further changes are necessary in assigned yields or premium rates under the conditions set forth in § 400.304(f). In determining whether further changes are necessary, the eligibility criteria will be recomputed each subsequent year using the premium rates and yields which would have been applicable had this part not been in effect.

(f) Nonstandard Classification changes will not be made that:

(1) Increase assigned yields or decrease premium rates from those otherwise assigned by the actuarial tables, or

(2) Result in less than a 10 percent decrease in assigned yields or less than a 10 percent increase in premium rates from those otherwise assigned by the actuarial tables.

§ 400.305 Assignment of Nonstandard Classification.

(a) Assignment of a Nonstandard Classification of assigned yields, assigned yield factors, or premium rates shall be made on forms approved by the Corporation and included in the actuarial tables for the county.

(b) Nonstandard Classification assignment will be made each year for the year identified on the assignment forms and not subject to change under the provisions of this subpart by the Corporation for that year when included in the actuarial tables for the county except as a result of a request for reconsideration as provided in § 400.309, or as the result of appeals under subpart J.

(c) Nonstandard Classifications may be assigned to identified insurable acreage; person; or, to a combination of person and identified acreage whereby:

(1) Classifications assigned to identified insurable acreage apply to all acres of the insured crop grown on the identified acreage;

(2) Classifications assigned to a person apply to all insurable acres of the insured crop on which the person and any entity in which the person has substantial beneficial interest is actively engaged in farming; and

(3) Classifications assigned to a combination of a person and identified insurable acreage will only apply to those acres of the insured crop grown on the identified acreage on which the named person is actively engaged in producing such crop.

§ 400.306 Spouses and minor children.

(a) The spouse and minor children of an individual are considered to be the same as the individual for purposes of this subpart except that:

(1) The spouse who was actively engaged in farming in a separate farming operation prior to their marriage will be a separate person with respect to that separate farming operation so long as that operation remains separate and distinct from any farming operation conducted by the other spouse;

(2) A minor child who is actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation if:

(i) The parent or other entity in which the parent has a substantial beneficial interest does not have any interest in the minor's separate farming operation or in any production from such operation;

(ii) The minor has established and maintains a separate household from the parent;

(iii) The minor personally carries out the farming activities with respect to the minor's farming operation; and

(iv) The minor establishes separate accounting and recordkeeping for the minor's farming operation.

(b) An individual shall be considered to be a minor until the age of 18 is reached. Court proceedings conferring majority on an individual under 18 years of age will not change such individual's status as a minor.

§ 400.307 Discontinuation of participation.

In the event that insurance participation is interrupted for one or more years following the assignment of a Nonstandard Classification, the most recent Nonstandard Classification assigned will be continued from year to year until participation has been renewed for at least one crop year and at least three years of insurance experience have occurred in the current base period.

§ 400.308 Notice of nonstandard classification.

(a) The Corporation will give written notice to all persons to whom a Nonstandard Classification will be assigned. The notice will give the Nonstandard Classification and the person's rights and responsibilities according to this subpart.

(b) The person, upon receiving notice from the Corporation, will be responsible for giving notice of the Nonstandard Classification to any other person with an insurable interest affected by the classification. The person will give notice to any other affected person:

(1) Prior to the sales closing date if the other affected person has an established insurable interest at the time the classified person is notified by the Corporation; or

(2) Prior to the Classified person's establishing an insurable interest of another person that will be affected by the classification.

§ 400.309 Requests for reconsideration.

(a) Any person to be assigned a Nonstandard Classification under this subpart will be notified of and allowed not less than 45 days from the date notice is received to request reconsideration before the Nonstandard Classification becomes effective. The request will be considered to have been made when received, in writing, by the Corporation.

(b) Upon receipt of a timely request for reconsideration from the person to whom the classification will be assigned, the Corporation will:

(1) Review all information supplied by, and respond to all questions raised by the individual, or

(2) In the absence of information and questions, review insurance experience and determinations for compliance with this subpart and report review results to the individual requesting reconsideration.

(c) Upon review of a request for reconsideration, the classification to be assigned will be corrected for:

(1) Errors and omissions in insurance experience;

(2) Incorrect calculations under procedures in this subpart, and

(3) Typographical errors.

(d) If the review finds no cause for change, the classification will be assigned and placed on file in the actuarial tables for the county.

(e) If a request for reconsideration has not been timely made by a person within the 45 days as prescribed by this section, appeal rights under regulations contained in 7 CFR part 400, subpart J, and subsequent regulations, will be considered to have been waived by that person with regard to the Nonstandard Classification.

(f) Any person not satisfied by a determination of the Corporation upon reconsideration may further appeal under the provisions of 7 CFR part 400, subpart J.

Done in Washington, DC, on April 16, 1990.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-9461 Filed 4-23-90; 8:45 am]

BILLING CODE 3410-08-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loans, Referral Fees to Third Parties

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration (SBA) has had under review the issue of whether to allow an SBA participating lender to pay referral

fees to third parties which refer applicant borrowers to such lender. SBA is proposing to allow the payment of such fees provided that a lender may not pass the fee on the borrower, and the lender must make an independent credit analysis of the borrower for purposes of loan eligibility.

DATES: Comments must be submitted on or before June 25, 1990.

ADDRESSES: Comments may be mailed to Charles R. Hertzberg, Acting Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, 202/653–6574.

SUPPLEMENTARY INFORMATION: SBA has had under review and consideration the issue of whether to allow a participating lender to pay a referral fee to a third party as compensation for referring a small business concern applicant to the lender for making an SBA loan under section 7(a) of the Small Business Act (15 U.S.C. 736(a)). SBA has previously not permitted such fees because it did not want the small business concern to bear the brunt of paying the referral fee either directly or indirectly, nor did it want a lender to abdicate its contractual and regulatory responsibility and duty to make an independent credit analysis of each applicant business.

SBA has reconsidered its present policy because it is aware that referral fees are a fact of business in normal commercial lending. Accordingly, SBA is proposing in this notice to allow a participating lender to pay a referral fee to another party for referring the applicant to the lender so long as the applicant is not charged for such fee directly or indirectly, and the lender undertakes and makes the credit analysis without redelegating such responsibility to any other party. If a lender complies with these proposed conditions, the interests of the small business concern will be protected and the lender will be in a reasonable competitive position with other lenders which may also be paying referral fees. All SBA participating lenders are subject to SBA's rules and regulations governing conflict of interest (13 CFR 120.102–10). Therefore, SBA is not adding a specific prohibition regarding the ability to pay referral fees of associates and affiliates. But SBA deems it important to emphasize that any lender which pays a referral fee must act in such a way as to avoid the existence, or the appearance, of preferential treatment or the loss of independent, impartial and objective judgment.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities since SBA believes that only a small number of lenders would be prepared to absorb the cost of referral fees rather than pass such charges along to the applicant small business concern. In this regard the gross number of SBA guaranteed loans with referral fees paid under this rule if it becomes final would in no way amount to more than 1,000 loans per year. SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the proposed change is not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List Of Subjects in 13 CFR Part 120

Loan programs/business, Small business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 120, chapter I, title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.104–2 is proposed to be amended by adding a new subparagraph (e)(5) to read as follows:

§ 120.104–2 Service and commitment fees.

* * * * *

(e) Fees for other services. * * *

(5) A lender may pay a referral fee to another party as compensation for referring the applicant small business concern to the lender *provided* that:

(i) The applicant small business concern is not charged for such fee either directly or indirectly; and

(ii) The lender undertakes, and is responsible for, the credit analysis of the particular application without the redelegation of such responsibility by the lender to any other party, including the party receiving the referral fee.

* * * * *

(Catalogue of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Dated: March 29, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90–9392 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1284

RIN 3095–AA47

Temporary Exhibition of Privately-Owned Material in the National Archives Building

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: On April 11, 1990, NARA published a notice of proposed rulemaking at 55 FR 13553. The telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section was incorrect. The correct telephone number is shown below.

FOR FURTHER INFORMATION CONTACT: John Constance or Nancy Allard, 202–501–5110 (FTS 241–5110).

Dated: April 16, 1990.

John A. Constance,

Director, Policy and Program Analysis Division.

[FR Doc. 90–9336 Filed 4–23–90; 8:45 am]

BILLING CODE 7515–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

[RIN 2900–AD80]

Use of For-Profit Agencies in Programs of Employment Services and Independent Living

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulatory amendments.

SUMMARY: The proposed amendments conform Department of Veterans Affairs (VA) regulations to changes made by Public Law 100–689 which allow VA to use for-profit agencies and organizations to provide employment services and programs of independent living services

for veterans receiving assistance under the vocational rehabilitation program. Previously the agency could only use its own staff and resources or the resources of other public or private nonprofit entities to provide these services. The effect of these changes is to broaden the types of agencies and organizations which may be used to provide the services needed to carry out the veteran's rehabilitation program.

DATES: Comments must be received on or before May 24, 1990. It is proposed to make these amendments effective November 18, 1988, the date on which the law was enacted.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until June 4, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs (202) 233–6496.

SUPPLEMENTARY INFORMATION: Public Law 100–689, Veterans' Benefits and Programs Improvement Act of 1988 authorizes VA to use for-profit agencies under certain conditions to provide services needed to carry out programs of independent living services or furnish employment services. VA may contract with for-profit agencies for employment services and programs of independent living services if comparable services:

1. Are not available through public or nonprofit organizations; or

2. Cannot be provided cost-effectively through public or nonprofit organizations or VA.

These proposed regulatory amendments are retroactively effective. They are liberalizing, interpretive rules which implement statutory provisions. Moreover, VA finds that good cause exists for making these rules, like the section of the law which they implement, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to that benefit.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulations. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Secretary certifies that these proposed amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the proposed amendments simply conform VA regulations to changes made by law. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 27, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education is amended as follows:

Part 21—[AMENDED]

1. The authority citation for part 21, subpart A, continues to read as follows:

Authority: 38 U.S.C. 210(c).

§ 21.160 [Amended]

2. In § 21.160, paragraph (e) is revised to read as follows:

* * * * *

(e) Coordination with other VA elements and other Federal, State, and local programs. Implementation of programs of independent living services and assistance will generally require extensive coordination with other VA and non-VA programs. If appropriate arrangements cannot be made to provide these services through VA, other governmental, private nonprofit and for-profit agencies and facilities may be used to secure necessary services if the requirements contained in § 21.294 are met.

(Authority: 38 U.S.C. 220, 1509, 1520, Pub. L. 100–689)

3. In § 21.162, paragraph (c)(3) is removed and the authority citation at the end of the section is revised to read as follows:

* * * * *

(Authority: 38 U.S.C. (a)(15), Pub. L. 99–576, Pub. L. 100–689)

4. In § 21.252, paragraph (a)(1)(v) is revised, paragraph (a)(1)(vi) is added, paragraph (d)(3) is revised and the authority citations following (a)(1)(vi) and (d)(3) are revised to read as follows:

§21.252 Job development and placement services.

* * * * *

(v) The services of any other public, or nonprofit organization having placement services available; and

(vi) Any for-profit agency in a case in which it has been determined that comparable services are not available through public and nonprofit agencies and comparable services cannot be provided cost-effectively by the public and nonprofit agencies listed in this paragraph.

(Authority: 38 U.S.C. 1517(a)(2), Pub. L. 100–689)

* * * * *

(d) *Interagency coordination.* * * *

* * * * *

(3) Other public, for-profit and nonprofit agencies providing employment and related services.

(Authority: 38 U.S.C. 1516, 1517, Pub. L. 100–689)

§ 21.294 [Amended]

5. In § 21.294, paragraphs (b)(2), (b)(3) and (c) are revised, paragraph (b)(4) is added, the authority citation following (b)(4) is revised and the authority following paragraph (c) is added to read as follows:

* * * * *

(b) *Selecting a facility for provision of independent living services.*

* * * * *

(2) VA may use public and nonprofit agencies and facilities to furnish independent living services. Public and nonprofit facilities may be:

(i) VHS&RA facilities which provide independent living services;

(ii) Facilities which meet standards established by the State rehabilitation agency for rehabilitation facilities or for providers of independent living services;

(iii) Facilities which are neither approved nor disapproved by the State rehabilitation agency, but are determined by VA as able to provide the services necessary in an individual veteran's case.

(3) VA also may use for-profit agencies and organizations to furnish programs of independent living services only if services comparable in

effectiveness to those provided by for-profit agencies and organizations:

(i) Are not available through public or nonprofit agencies or the Veterans Health Service and Research Administration (VHS&RA); or

(ii) Cannot be obtained cost-effectively from public or nonprofit agencies or the facilities of VHS&RA.

(4) In addition to the criteria described in paragraph (b)(3)(i) of this section for public and private nonprofit agencies, for-profit agencies and organizations must meet any additional standards established by local, state (including the State rehabilitation agency), and Federal agencies which are applicable to for-profit facilities and agencies offering independent living services.

(Authority: 38 U.S.C. 1515, 1520, Pub. L. 99-576, Pub. L. 100-689)

(c) *Use of facilities:* VA policy shall be to use VA facilities, if available, to provide rehabilitation services for veterans in a rehabilitation program under Chapter 31. Non-VA facilities may be used to provide rehabilitation services only when necessary services are not readily available at a VHS&RA facility. This policy shall be implemented in accordance with the provisions of paragraph (b) of this section in the case of the use of for-profit facilities to provide programs of independent living services, or in the case of employment services, provision of such services by non-VA sources is permitted under § 21.252.

(Authority: 38 U.S.C. 1515, Pub. L. 100-689)

* * * * *

[FR Doc. 90-9416 Filed 4-23-90; 8:45 am]
BILLING CODE 8320-01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3757-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Reynolds Metals Company, Alloys Sheet & Plate Plant, Sheffield, Alabama, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model and its application in evaluating the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until June 8, 1990. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision and/or the model used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by May 9, 1990. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-90-RMEP-FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Robert Kayser, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the

background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also considered hazardous wastes. Such wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3(c) and (d)(2). The substantive standards for "delisting" a treatment residue or a mixture are the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Based on this review, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

For this delisting determination, the Agency used such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Reynolds' petitioned waste on human health and the environment. Specifically, the model was used to predict compliance-point concentrations which were then compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that it would be inappropriate to request ground-water monitoring data for this petition because Reynolds sends the petitioned waste off site for disposal. For petitioners using off-site management, the Agency believes that, in most cases, the ground-water monitoring data collected would not be meaningful. Most commercial land disposal facilities accept wastes from numerous generators. Any ground-water contamination or leachate would be characteristic of the total volume of waste disposed of at the site. In most cases, the Agency believes that it would be impossible to isolate ground-water impacts associated with any one waste disposed of in a commercial landfill. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

Reynolds Metals Company, Alloys Sheet & Plate Plant, Sheffield, Alabama

1. Petition for Exclusion

Reynolds Metal Company (Reynolds), at its Alloys Sheet and Plate Plant, located in Sheffield, Alabama, is involved in the electroplating of coiled aluminum stock that is prepared for additional coatings by a chromating chemical conversion coating process. Reynolds petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum". The listed constituents for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide (complexed) (see 40 CFR 261, appendix VII).

Reynolds petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Reynolds also believes that its treatment process generates a non-hazardous waste because the constituents of concern are not present in appreciable amounts. Reynolds further believes that the waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(2)–(d)(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Reynolds' current petition.

2. Background

Reynolds originally petitioned the Agency for the exclusion of its waste on July 28, 1981 and subsequently provided additional information. Based upon the Agency's review of the petition, Reynolds was granted a temporary exclusion on November 22, 1982 (see 47

FR 52680). The Agency's basis for granting the temporary exclusion, at that time, was the low concentration of the constituents of concern, hexavalent chromium and complexed cyanide, in the petitioned waste. In 1984, however, HSWA was enacted, which in part, required the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. As a result, the Agency re-evaluated Reynolds' petition to: (1) Determine whether the temporary exclusion should be made final based on the original listing criteria; and (2) determine whether the waste was non-hazarous with respect to additional factors other than those for which the waste was listed. The Agency proposed to deny Reynolds' petition on July 23, 1986 based on 1981 data that showed significant levels of leachable chromium in the waste (see 51 FR 26426). On September 4, 1986, Reynolds submitted information regarding changes that had been made in 1982 to the processes generating the petitioned waste. Reynolds claimed that these changes resulted in a reduction of chromium concentrations by two orders of magnitude between 1981 and 1984. However, the Agency did not consider this information to be adequate proof that the process changes had been implemented. On November 18, 1986, the Agency published a final denial for Reynolds' waste (see 51 FR 41616). On December 19, 1986, Reynolds submitted a new petition with additional information regarding the process changes described in their September 4, 1986 submittal. Today's notice is the result of the evaluation of this new petition.

In support of its petition, Reynolds submitted (1) detailed descriptions of its manufacturing and waste treatment processes, including schematic diagrams; (2) a list of raw materials (and Material Safety Data Sheets (MSDSs) for all trade name materials) used in the manufacturing processes that generate the petitioned filter press sludge; (3) results from total constituent and EP analyses for the EP toxic metals, cyanide, and nickel on representative samples of the petitioned waste; (4) results from total oil and grease analyses on representative samples of the petitioned waste; and (5) test results from characteristics testing for ignitability, corrosivity, and reactivity.

Reynolds manufactures coiled aluminum stock. The process involves the following steps: washing the aluminum stock in a caustic soap wash to remove all oil and grease, rinsing with clean water, pretreating the aluminum stock using a chromating chemical conversion coating process to prepare the base metal for additional coatings, a second clean water rinse, coating, baking, quenching, waxing (if required), and recoiling. The exact coating imparted on the metal depends on the final coated product and its ultimate end use. The reaction temperature in the conversion coating tanks is controlled to maximize coating adhesion and minimize chromium carryover into the waste. The wastewaters from the caustic wash and the first clean water rinse are discharged into a storm sewer, which is discharged via a National Pollutant Discharge Elimination System (NPDES) permitted outfall. The spent chromating solutions from the pretreatment processes and the wastewater from the second clean water rinse are discharged to Reynolds' Chrome Treatment Plant (CTP) where the petitioned waste is ultimately generated. These wastewaters are the only wastes that enter the CTP. A surge tank is used to equalize the concentration and volume of raw waste entering the CTP. Treatment of the wastewaters in a chemical reduction tank begins by adding sulfur dioxide to reduce hexavalent chromium to trivalent chromium. The conditions in the chemical reduction tank and, in turn, the reduction of hexavalent chromium, are continuously monitored using a pH meter and an oxidation-reduction potential (ORP) meter. The wastewaters are then pumped through a clarifier where lime slurry is added to the wastewaters to promote precipitation of metal hydroxides. The resultant sludge is further dewatered in a vacuum filter. The liquid portion of the filtered waste (the filtrate) is discharged to a NPDES permitted storm sewer and the solid portion of the filtered waste (the petitioned waste) is sent to a hazardous waste landfill.

To collect representative samples from filter presses like Reynolds', petitioners are normally requested to collect a minimum of four composite samples composed of independent grab samples collected over time (*e.g.*, grab samples collected every hour and composited by shift). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-85-003), April 1985.

Reynolds collected nine composite samples from the vacuum filter during a four-week period in July and August of 1984 and a two-week period in August of 1986; both sampling events took place after the 1982 process changes had been made. Each composite sample was composed of four to six grab samples randomly collected from the vacuum filter. The nine composite samples were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) and the extraction procedure (EP) leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the EP toxic metals, nickel, and cyanide. The nine composite samples were also analyzed for oil and grease content, ignitability, reactivity, and corrosivity.

3. Agency Analysis

Reynolds used "Methods for Chemical Analysis of Water and Wastes" Methods 206.3 through 335.3 to quantify the total constituent concentrations of the EP toxic metals, nickel, and cyanide in the petitioned waste. In addition to these methods, the EP Toxicity Test was used to determine the leachable concentrations of the EP toxic metals, nickel, and cyanide. Table 1 presents the maximum total constituent and EP leachate concentrations of the EP toxic metals, nickel, and cyanide.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP LEACHATE CONCENTRATIONS (ppm) FILTER PRESS SLUDGE

Constituents	Total constituent analyses	EP leachate analyses
Arsenic	0.218	0.0018
Barium	42	<2.0
Cadmium	0.575	<0.01
Chromium	44,100	0.09
Chromium (hexavalent)	<0.02	<0.01
Lead	10.097	<0.1
Mercury	<0.004	<0.0002
Selenium	0.066	<0.005
Silver	1.238	<0.01
Nickel	8.25	0.16
Cyanide	<0.05	<0.05

<Denotes that the constituent was not detected at the detection limit specified in the table.

The detection limits in table 1 represent the lowest concentrations quantifiable by Reynolds, when using

the appropriate analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Using "Standard Methods for the Extraction of Water and Wastewater", 16th edition, Method 503D, Reynolds determined that its filter press sludge had a maximum oil and grease content of 0.002 percent; therefore, the EP analyses did not have to be modified in accordance with the Oily Waste EP methodology (*i.e.*, wastes having more than one percent total oil and grease may either have significant concentrations of constituents of concern in the oil phase, which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample). See SW–846 Method 1330.

Reynolds provided test data indicating that the filter press sludge is not ignitable below 140 °F. In addition, Reynolds provided analytical data for samples collected in 1980/1981 indicating that its filter press sludge contains less than 20 ppm total sulfide. Further, on the basis of test results provided by Reynolds, pursuant to 40 CFR 260.22, none of the filter press sludge samples exhibited the characteristic of corrosivity. See 40 CFR 261.21, 261.22, and 261.23.

Reynolds submitted a signed certification stating that, based on current annual waste generation, the maximum annual generation rate of filter press sludge is 3,840 cubic yards. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste volume. EPA accepts Reynolds' certified estimate of 3,840 cubic yards.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant Reynolds' exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has initiated a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions, and may select facilities likely to be proposed for exclusion for spot-check sampling.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for filter press sludges and decided that disposal in a landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminant ground water. The Agency, therefore, evaluated the petitioned waste using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminate levels in ground water at a hypothetical receptor well or compliance point (*i.e.*, the model estimates the dilution of a toxicant within the aquifer for a specific volume of waste). The Agency requests comments on the use of the VHS model as applied to the evaluation of Reynolds' waste.

Specifically, the Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of Reynolds' filter press sludge. The Agency's evaluation, using Reynolds' estimate of 3,840 cubic yards per year and the maximum reported EP leachate concentrations, generated the compliance-point concentrations shown in table 2. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, barium, cadmium, lead, mercury, silver, selenium, and cyanide) from Reynolds' waste because they were not detected in the EP extract using the appropriate analytical test methods (see table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. Specifically, if a constituent cannot be detected (when using the appropriate analytical methjod), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 2.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (ppm) FILTER PRESS SLUDGE

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Arsenic	0.0003	0.05
Chromium	0.014	0.05
Nickel	0.024	0.7

[1] See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," November 1989, located in the RCRA public docket.

The filter press sludge exhibited arsenic, chromium, and nickel levels at the compliance point below the health-based levels used in delisting decision-making. As reported in Table 1, total constituent analyses for hexavalent chromium indicated that hexavalent chromium was not detected in any of the nine analyzed samples (at a detection limit of 0.02 ppm). The chromium in Reynolds' waste, therefore, is at least 99.99 percent trivalent chromium. Trivalent chromium, which is a natural constituent of the earth's crust and is an essential human nutrient, is considered to be much less toxic than hexavalent chromium (see 53 FR 10206, March 29, 1988). The Agency, therefore, does not believe that total levels of chromium in Reynolds' waste present a hazard to either human health or the environment. As also reported in Table 1, the maximum concentration of total cyanide in Reynolds' waste is less than 0.05 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the Agency believes that the maximum level of reactive cyanide in the petitioned waste also will be less than 0.05 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Lastly, because the total constituent concentration of sulfide in the waste was less than 20 ppm, the Agency believes that the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket.

The Agency concluded, after reviewing Reynolds' processes and raw materials list, that no other hazardous constituents of concern, other than those tested for, are being used by Reynolds and that no other constituents of

concern are likely to be present or formed as reaction products or by-products in Reynolds' waste. In addition, the Agency does not believe that Reynolds' waste exhibits any of the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

5. Conclusion

The Agency believes that Reynolds has successfully demonstrated that its filter press sludge is not hazardous. Reynolds' manufacturing and waste treatment processes are believed to be consistent because the facility does not perform as a job shop or have seasonal product variations. The Agency believes that Reynolds' four-week and two-week sampling periods were sufficient to characterize the day-to-day variation of constituent concentrations in the filter press sludge. The Agency, therefore, is proposing that Reynolds' waste be considered non-hazardous, as it should not present a hazard to either human health or the environment. The Agency proposes to grant an exclusion to Reynolds Metals Company, located in Sheffield, Alabama, for its wastewater treatment sludge described in its petition as EPA Hazardous Waste No. F019. If the proposed rule becomes effective, the wastewater treatment sludge would no longer be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

If made final, the exclusion will apply only to the processes and waste volume covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that a change in waste composition or increase in waste volume occurred. The facility accordingly would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulaton is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et. seq.*) and have been assigned OMB control number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: March 30, 1990.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

Appendix IX [Amended]

2. In table 1 of appendix IX, of part 261 add the following wastestreams in alphabetical order by "Facility" to read as follows:

Appendix IX—Wastes Excluded Under § 260.20 and § 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
* * *	* * *	* * * *
Reynolds Metals Company	Sheffield, Alabama	Wastewater treatment filter press sludge (EPA Hazardous Waste No. F019) generated (at a maximum annual rate of 3,840 cubic yards) from the chemical conversion coating of aluminum. This exclusion was published on [insert date of final rule's publication in the *Federal Register*].
* * *	* * *	* * * *

[FR Doc. 90-9351 Filed 4-23-90; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 55, No. 79
Tuesday, April 24, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Sunken Camp Area, Chequamegon National Forest, Bayfield County, WI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final environmental impact statement (EIS) to consider resource management activities that could be implemented between 1990 and 1995 in the 24,189 acre Sunken Camp Area on the Washburn Ranger District.

The Sunken Camp Area extends along Forest Road 251 approximately 10 miles west of Washburn, Wisconsin.

Activities to be considered would include:

- Wildlife habitat improvement for species requiring forested and open land.
- Construction of a horse staging facility, carry-in boat access, and walk-in campsites.
- Arterial and collector road reconstruction for improved access.
- Vegetation management in small (less than 10 acres) to large (substantially greater than 40 acres) blocks for wildlife habitat improvement and timber production.

The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice that an environmental analysis will occur on the proposal so that interested and affected people are aware of how they may participate in and contribute to the final decision. Comments directed to the substance of the proposal, as opposed to the scope, are more appropriately submitted during the comment period following release of the draft environmental impact statement.

DATES: Comments concerning the scope of the analysis should be received in writing by May 14, 1990 to ensure timely consideration.

ADDRESSES: Send written comments to: District Ranger, Washburn Ranger District, 113 East Bayfield Street, P.O. Box 578, Washburn, WI 54891. For Further Information, contact: Stevan Christiansen, Assistant Ranger, (715) 373–2667.

SUPPLEMENTARY INFORMATION: The Chequamegon National Forest Land and Resource Management Plan was completed and approved in August, 1986.

The Forest Plan provides for the production of aspen pulpwood and other wood products, the enhancement of habitat for game and non-game species of wildlife and opportunities for a variety of recreation activities in the Sunken Camp Area.

Several issues have surfaced since the Forest Plan was prepared that are applicable to the Sunken Camp Area. These issues include:

—Management of forested land in large contiguous acreages to reduce forest fragmentation.
—Decreased growth and vigor due to disease and insect damage in large contiguous areas of mature jack pine trees.

Clearcuts greater than 40 acres in size will be considered in some of the Sunken Camp Area for the following reasons:

—To provide habitat for plant and animal species that require large contiguous acreages of similar vegetation.
—To reduce forest fragmentation caused by clearcutting many small patches within large forested areas.
—To clearcut diseased and insect infested mature jack pine trees in areas larger than 40 acres in size in order to establish areas of young trees of mixed species that are healthier, more vigorous and more resistant to disease and insect infestation.

Amendment of the Chequamegon National Forest Land and Resource Management Plan may be necessary depending on the alternative selected by the Deciding Officer.

A range of alternatives for managing the resources of the Sunken Camp area will be considered to meet Forest Plan objectives and address public issues and management concerns. Possible alternatives that may be considered are:

—No action.
—Vegetation management that will provide wildlife habitat and timber products by clearcut harvests on areas of 40 acres or less in size and also will provide a variety of recreation opportunities, and other resource opportunities.
—Vegetation management that will provide wildlife habitat and timber by clearcut harvests on areas greater than 40 acres in size and also will provide a variety of recreation opportunities, and other resource opportunities.

Federal, State and local agencies, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process will include:

—Identification of potential issues received through written comments, telephone calls and personal communications. An open house to receive public comments will be held at the Washburn Ranger District, 113 East Bayfield Street, P.O. Box 578, Washburn, Wisconsin on May 10, 1990 from 1–8 p.m.
—Issues identified through scoping will be analyzed in depth.
—Elimination of insignificant issues or those which have been covered by a previous environmental review.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The analysis is expected to be completed within three (3) months. The draft environmental impact statement is expected to be filed with The Environmental Protection Agency (EPA) and available for public review in July, 1990. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the Federal Register.

After the comment period for the draft environmental impact statement ends, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The final environmental impact statement is scheduled to be completed in October, 1990. In the final environmental impact statement, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, and environmental consequences discussed in the environmental impact statement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

The responsible official is Duane D. Kick, District Ranger, USDA—Forest Service, 113 East Bayfield Street, P.O. Box 578, Washburn, Wisconsin 54891.

Dated: April 17, 1990.

Duane D. Kick,

District Ranger.

[FR Doc. 90-9487 Filed 4-23-90; 8:45 am]

BILLING CODE 3410-11-M

Park Lake Area Integrated Resource Analysis; Helena National Forest; Jefferson and Lewis and Clark Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare and environmental impact statement.

SUMMARY: On July 1, 1988, notice was published in the **Federal Register** (53 FR 24973) that an environmental impact statement would be prepared to analyze and disclose the environmental impacts of implementing forest management activities in the Park Lake area of the Helena Ranger District, Helena National Forest, Jefferson and Lewis and Clark Counties, Montana.

That notice is hereby cancelled.

The Helena National Forest has since determined that an environmental impact statement is inappropriate for the large area and multitude of proposed actions that will be identified. Additional site-specific analysis of proposed management practices will be needed and documentation will be performed on individual proposed actions.

DATES: This action is effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Jerry V. Adelblue, Environmental Coordinator, Helena National Forest, 301 S. Park, Drawer 10014, Helena, MT 59626; telephone (406) 449-5201.

Dated: April 18, 1990.

Ernest R. Nunn,

Forest Supervisor.

[FR Doc. 90-9441 Filed 4-23-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: National Oceanic and Atmospheric Administration.

Title: Involuntary Child and Spousal Support Allotments of NOAA Corps Officers.

Form Number: None; OMB—0648-0195.

Type of Request: Request for extension of OMB approval of a currently cleared collection.

Burden: 1 respondents; 1 reporting hours; average hours per response 1 hour.

Needs and Uses: Individuals entitled to (unpaid) spousal and/or child support from NOAA. Corps officers may submit substantiating information in order to have the money deducted from the officer's paycheck.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Ronald Minsk, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230. Written comments and recommendations for the proposed information collection should be sent to Ronald Minsk, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: April 18, 1990.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 90-9370 Filed 4-23-90; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[A-479-801]

Preliminary Determination of Sales at Less Than Fair Value; Industrial Nitrocellulose From Yugoslavia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to suspend liquidation of all entries of industrial nitrocellulose from Yugoslavia, as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by July 2, 1990.

EFFECTIVE DATE: April 24, 1990.

FOR FURTHER INFORMATION CONTACT: Karmi Leiman or Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–8498 or (202) 377–5288, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that imports of industrial nitrocellulose from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since publication of the notice of initiation on October 17, 1989, (54 FR 42533), the following events have occurred:

On November 3, 1989, the ITC determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Yugoslavia of industrial nitrocellulose (USITC Pub. No. 2231, November 1989).

On November 3, 1989, the Department presented its questionnaire to counsel for Milan Blagojevic (MB). This manufacturer accounted for 100 percent of exports of the subject merchandise to the United States during the period of investigation.

MB submitted responses to our questionnaire on November 22 and December 20, 1989. The Department sent a letter to MB on January 12, 1990 outlining deficiencies in the responses. MB replied to the deficiency letter on February 2, 1990.

On January 12, 1990, petitioner alleged that home market sales were made at below the cost of production (COP). The Department initiated a COP investigation on January 31, 1990, and issued a COP questionnaire to MB on February 5, 1990. MB responded to the COP questionnaire on March 5, 1990. The Department sent a letter to MB on March 20, 1990 outlining deficiencies in the COP response. MB replied to the deficiency letter on April 3, 1990.

On January 29, 1990, the petitioner requested that the Department postpone its preliminary determination in this case. On February 1, 1990, the Department postponed the preliminary determination until April 17, 1990 (55 FR 4647, February 9, 1990).

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the U.S. tariff schedules were fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered or withdrawn from warehouse for consumption on or after this date will be classified solely according to the appropriate HTS subheadings. The HTS subheadings are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent which is produced from the reaction of cellulose with nitric acid. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. Industrial nitrocellulose is currently provided for under HTS subheading 3912.20.00. Prior to January 1, 1989, industrial nitrocellulose was classifiable under item 445.25 of the *Tariff Schedules of the United States Annotated* (TSUSA). The scope of this investigation does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Period of Investigation

The period of investigation is April 1, 1989 through September 30, 1989.

Such or Similar Comparisons

For the purposes of this investigation we have determined that all industrial nitrocellulose comprises a single category of such or similar merchandise. On the basis of six criteria (nitrogen percentage, viscosity rating, wetting agent type, cellulose source, physical form and wetting agent percentage) we determined that there were no sales of identical merchandise in the home market with which to compare merchandise sold in the United States. Therefore, we compared sales of the most similar merchandise and made adjustments for differences in the physical characteristics of the merchandise in accordance with 19 CFR 353.57.

Fair Value Comparisons

To determine whether sales of industrial nitrocellulose from Yugoslavia to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price.

We based United States price on purchase price in accordance with section 772(b) of the Act because all sales were made directly to unrelated parties prior to importation into the United States. We calculated purchase price based on packed f.o.b. Yugoslav port prices. We made deductions for foreign inland freight, foreign inland insurance, and foreign brokerage and handling. In an attempt to compensate for hyperinflation in Yugoslavia, foreign inland freight, foreign inland insurance, and foreign brokerage and handling were converted to U.S. dollars using the exchange rate in effect on the date the charges were incurred, rather than the date of the U.S. sale to which the charges pertain. In accordance with section 772(d)(1)(B) of the Act, we added import duties imposed by Yugoslavia which have not been collected by reason of the exportation of the merchandise to the United States.

We did not adjust for certain taxes (under section 772(d)(1)(C) of the Act) that the respondent reported were imposed in Yugoslavia and rebated by reason of the exportation of the merchandise to the United States. MB reported that it received a refund from the Yugoslav government for taxes paid by MB,s suppliers at the rate of 4.92 percent of the gross unit U.S. price. MB stated that the reported home market prices included the taxes. However, MB was unable to provide any evidence that the tax was included in the home market price, provide information on the home market tax rate, or even show that the tax was paid.

Foreign Market Value

We compared home market ex-factory sales prices to the cost of production in all cases. We found that these prices were above the cost of production. Therefore, we based foreign market value on home market sales in accordance with section 773(a)(1)(A) of the Act. We calculated foreign market value based on packed, ex-factory prices to unrelated customers in the home market. Because we determined Yugoslavia's economy to be hyperinflationary, we divided the period of investigation into six different sub-periods based on home market price changes. Home market prices remained constant during each of these sub-periods. In an attempt to eliminate the distortive effect of inflation on home market prices, each U.S. sale was compared to an average foreign market

value calculated for the sub-period in which the U.S. sale was made.

Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments for differences in credit expenses and bank charges. Because commissions were paid on U.S. sales and not on home market sales, we added U.S. commissions to the foreign market value and subtracted from foreign market value the lesser of U.S. commissions or home market indirect selling expenses.

Finally, we made an adjustment for differences in packing costs by subtracting home market packing costs from the foreign market value and adding all U.S. packing costs.

Currency Conversion

In accordance with 19 CFR 353.60, when calculating foreign market value, we normally make currency conversions using the exchange rates certified by the Federal Reserve Bank of New York. Certified rates are not currently available for Yugoslav dinars for the period of investigation. Therefore, for the purposes of this preliminary determination, we used the daily exchange rates provided by MB in its response. We confirmed the accuracy of the rates by comparing them to the rates provided by Jugobanka in New York. Jugobanka officials explained that the rates provided to the Department were obtained from the Yugoslav central bank.

Verification

As provided in section 776(b) of the Act, we will verify all information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of industrial nitrocellulose from Yugoslavia, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Milan Blagojevic	9.42
All Others	9.42

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms in writing that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than June 5, 1990, and rebuttal briefs no later than June 11, 1990. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 1:30 p.m. on June 14, 1990, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099 within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. section 1673b(f)).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-9369 Filed 4-23-90; 8:45 am]

BILLING CODE 3510-05-M

[C-357-803]

Postponement of Preliminary Countervailing Duty Determination; Leather from Argentina

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, Eagle-Ottawa Leather Company, S.B. Foot Tanning Company, Gebhardt-Vogel Tanning Company, Inc., Hermann-Oak Leather Company, Irving Tanning Company, Pfister & Vogel Tanning Company, Prime Tanning Company, Inc., Salz Leathers, Inc., and Westfield Tanning Company, the Department of Commerce (the Department) is postponing its preliminary determination in the countervailing duty investigation of leather from Argentina. The preliminary determination will be made on or before July 9, 1990.

EFFECTIVE DATE: April 26, 1990.

FOR FURTHER INFORMATION CONTACT: Kay Halpern or Roy A. Malmrose, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-0192 or 377-5414.

SUPPLEMENTARY INFORMATION: On March 1, 1990, the Department initiated a countervailing duty investigation of leather from Argentina. In our notice of initiation we stated that we would issue our preliminary determination on or before May 7, 1990 (55 FR 8159, March 7, 1990).

On April 12, 1990, the petitioners filed a request that the preliminary determination in this investigation be postponed to not later than 150 days after the date of the filing of the petition.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request made by petitioner in this investigation, the Department is postponing its preliminary determination to not later than July 9, 1990. This notice is published pursuant to section 703(c)(2) of the Act.

Dated: April 18, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-9371 Filed 4-23-90; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

Pacific and North Pacific Fishery Management Councils; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

Technical advisors of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC) will hold a public meeting on May 7–8, 1990, to discuss development of possible definitions of "overfishing" for Pacific coast salmon stocks.

On May 7 at 8:30 a.m., the PFMC's technical advisors will begin meeting at the Pacific Council's office (address below). At 1 p.m., a combined meeting of all technical advisors will be held at the Metro Building, 2000 SW. First Avenue, room 440, Portland, OR. Technical advisors include representatives of the NPFMC's Troll Salmon Plan Team, and the PFMC's Salmon Technical Team and Salmon Subcommittee members of the Scientific and Statistical Committee.

Proposed definitions of "overfishing" developed at this meeting may be incorporated into each Council's salmon fishery management plan amendment process. Comments pertaining to the definitions of "overfishing" will be accepted from the public at appropriate times during the meeting. Final definitions adopted by each Council will be submitted to the Secretary of Commerce prior to November 23, 1990.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: April 18, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-9367 Filed 4-23-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

April 20, 1990.

AGENCY: Committee of the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and re-opening a limit.

EFFECTIVE DATE: April 25, 1990.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletion boards of each Customs port or call (202) 535–9480. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased variously, for swing, carryforward and special carryforward. As a result, the limit for Category 647, which is currently filled, with re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 27664, published on June 30, 1989; and 54 FR 36368, published on September 1, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

April 20, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 23, 1989 and August 28, 1989, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on July 1, 1989 and extends through June 30, 1990.

Effective on April 25, 1990, the directives of June 23, 1989 and August 28, 1989 are amended to increase the limits for the following categories, as provided under the provisions of the current bilateral textile agreement between the Governments of the United States and Indonesia:

Category	Adjustment twelve-month limit [1]
Levels in Group I:	
219	3,550,677 square meters
313	8,482,852 square meters
315	19,129,726 square meters
317/617/326	13,663,188 square meters
334/335	117,949 dozen
338/339	838,538 dozen
340	571,467 dozen
347/348	983,945 dozen
351/651	319,976 dozen
445/446	42,897 dozen
604-A [2]	333,806 kilograms
613/614/615	12,315,507 square meters
625/626/627/628/629	14,611,449 square meters
635	89,762 dozen
638/639	1,071,465 dozen
640	568,320 dozen
641	1,510,599 dozen
647	703,003 dozen
648	1,461,307 dozen
Sublevels in Group II:	
336/636	394,926 dozen
342/642	242,663 dozen
611	4,557,099 square meters
847	284,487 dozen

[1] The limits have not been adjusted to account for any imports exported after June 30, 1989.

[2] Category 604-A: only HTS number 5509.32.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exceptions to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-9566 Filed 4-20-90; 11:58 am]

BILLING CODE 3510-DR-M

Deduction of Import Charges for Certain Cotton, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

April 20, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs deducting charges and re-opening a limit.

EFFECTIVE DATE: April 26, 1990.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of the limit, refer to the Quota Status Reports posted on the bulletion boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In accordance with exchange of letters dated April 13, 1990 and April 16, 1990 between the Governments of the United States and Sri Lanka, it was agreed that 250,000 dozen shall be deducted from the charges made to the current limit for Categories 347/348/847. This same amount shall be charged in equal installments to the next two agreement periods beginning with the period July 1, 1990 through June 30, 1991. As a result of the deduct, the limit for Categories 347/348/847, which is currently filled, will re-open.

Further, the two governments agreed to establish a sublimit for long trousers and slacks in Categories 347/348/847 beginning with the July 1, 1990 through June 30, 1991 period.

A copy the exchange of letters is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 24731, published on June 9, 1989.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

April 20, 1990.

Dear Commissioner:

To facilitate implementation of the Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, between the Governments of the United States and Sri Lanka, I request that, effective on April 26 1990, you deduct 250,000 dozen from the charges made to the current limit established in the directive of June 5, 1989 for Categories 347/348/847 for the period July 1, 1989 through June 30, 1990.

This letter will be published in the **Federal Register.**

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–9593 Filed 4–20–90; 2:29 pm]

BILLING CODE 3510–DR–M

CONSUMER PRODUCT SAFETY COMMISSION

Commission Priorities; Public Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public meeting.

SUMMARY: The Commission will conduct a public meeting to obtain views from all interested parties about priorities for Commission attention during fiscal year 1992. Participation by members of the public is invited. Written comments and oral presentations concerning Commission priorities will become part of the public record.

DATES: The meeting will begin at 10 a.m. on May 17, 1990. Requests from members of the public who desire to make oral presentations must be received by the Office of the Secretary not later than May 3, 1990. Persons desiring to make presentations at this meeting must submit a written text or summary of their presentations not later than May 3, 1990. Written comments submitted in lieu of oral presentations will be accepted until May 10, 1990.

ADDRESSES: The meeting will be in room 556, 5401 Westbard Avenue, Bethesda, Maryland. Written comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: For information about the meeting or to request an opportunity to make a presentation at the meeting, call or write Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: The purpose of the meeting on May 17, 1990, is to obtain views concerning projects and activities which should be given priority attention during fiscal year 1992, which begins October 1, 1991. The Commissioners desire to obtain views from a wide range of interested parties including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; and health and safety officers of state and local governments.

The Commission is charged by Congress with protection of the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers in or around their homes, in schools, in recreation, and other settings, its staff and budget are limited. For this reason, the Commission must concentrate its resources on the most serious hazards associated with consumer products within its jurisdiction in order to discharge its Congressional mandate effectively. Commission priorities are selected in accordance with the Commission policy governing establishment of priorities codified at 16 CFR 1009.9.

Persons who desire to make presentations at the meeting on May 17, 1990, should call or write Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6980, not later than May 3, 1990.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text or a summary of their presentations to the Office of the Secretary not later than May 3, 1990. The Commission reserves the right to

impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The public meeting will begin at 10 a.m. on May 17, 1990, and will conclude the same day.

Written comments submitted in lieu of oral presentations should be received in the Office of the Secretary not later than May 10, 1990.

Dated: April 19, 1990.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 90-9462 Filed 4-23-90; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

Change of Date and Location for Public Hearing for the Draft Environmental Impact Statement for Proposed Development at Naval Base Pearl Harbor, Oahu, HI

The date and location of the public hearing for the Draft Environmental Impact Statement for proposed development at Naval Base Pearl Harbor, Oahu, Hawaii, announced in the **Federal Register** on April 16, 1990, has been changed. The public hearing will be held on May 24, 1990, starting at 7 p.m. at the Makalapa Elementary School, 4435 Salt Lake Boulevard, Honolulu, Hawaii. The notice published previously in the **Federal Register** is reprinted below with the new date and location of the public hearing.

Pursuant to Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the Department of the Navy in cooperation with the U.S. Coast Guard and U.S. Army Corps of Engineers has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for proposed development at Naval Base Pearl Harbor, Oahu, Hawaii. The DEIS has been distributed to various federal, state and local agencies, elected officials, interest groups, the media and local libraries. Questions regarding this notice may be directed to Commander, Pacific Division, Naval Facilities Engineering Command, (attn: Mr. Gordon Ishikawa, telephone (808) 471–3088) Pearl Harbor, HI 96860–7300. A limited number of copies of the DEIS are available to fill single copy requests.

A public hearing to inform the public of the DEIS findings and to solicit comments will be held on May 24, 1990 at 7 p.m. at the Makalapa Elementary School, 4435 Salt Lake Boulevard, Honolulu, Hawaii.

The public hearing will be jointly conducted by the U.S. Navy, U.S. Coast Guard, and U.S. Army Corps of Engineers. Federal, state, and local agencies and interested parties are invited and urged to be present or represented at the hearing. In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. If longer statements are to be presented, they should be submitted in writing either at the hearing or mailed to the Commander, Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, HI 96860–7300, and summarized at the public hearing. All written statements must be postmarked by June 7, 1990, to become part of the official record.

Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight shall be given to both oral and written statements.

As discussed in the DEIS, the Navy proposed the construction of various improvements at Naval Base Pearl Harbor. The improvements are required to support various activities, including the homeporting of a battleship and two cruisers to support recommendations of the Secretary of Defense Commission on Base Realignment and Closure.

Three major components are included as part of the proposed action:

(1) A retractable bridge connecting Ford Island to the rest of the Naval Base,

(2) Further development of Ford Island, and

(3) Various operational and personnel support facilities on Ford Island, Naval Station Pearl Harbor, and Naval Shipyard Pearl Harbor.

Each major component is functionally independent of the others and could be implemented as a separate action.

Retractable Floating Bridge

The proposed bridge would be constructed to improve access to Ford Island and, hence, make possible further development of the island to serve existing and future missions at the Naval Base. Development of the mainside Pearl Harbor complex has reached the saturation point, while Ford Island contains 300 acres of open space (out of a total of 450 acres) which is not being used to its fullest possible potential by the Navy. Given improved access, approximately 2,800 feet of ship berthing space and other facilities could be put to more effective use. The slow and inefficient vehicular ferry and passenger boat transportation system presently in operation severely constrains the potential use of Ford Island's vacant land and underused facilities.

The preferred alternative for providing access is a 4,100 foot long retractable floating bridge, which would consist of a concrete bridge with a channel to allow passage of large vessels through the retractable span, and a fixed side span to allow passage for small boats. The bridge will have the following navigational clearances: horizontal, 100 feet between fenders in the closed position and 650 feet horizontal clearance in the open position; vertical, 30 feet above mean high water in the closed position and unlimited vertical clearance in the open position. The Ford Island terminus of the proposed retractable floating bridge would be to the north of the existing housing area, intersecting Saratoga Boulevard; the mainside terminus would be near Halawa Landing, north of the Bowfin Memorial and south of the Navy marina.

Alternatives to the retractable floating bridge include no action, expanded water-based system, fixed pile bridge without a moveable span, and sunken tube tunnel. Alternative termini on Ford Island for the retractable floating bridge, fixed bridge and tunnel alternatives include a terminus passing north of the Public Works Center, intersecting the realigned Saratoga Boulevard west of its present junction with Princeton Place; and a terminus passing through the housing area on the east end of the island, intersecting Lexington Boulevard west of the Arizona Memorial. Alternative termini on the mainside include the Richardson Recreation Center and McGrew Point.

Further Development of Ford Island

The Navy has always planned to develop Ford Island with various operational and personnel support facilities because of the availability of land and extreme crowding on the mainside of the Naval Base. With improved access to Ford Island, the construction of housing on the island becomes feasible. About 100 acres in the old runway area would be available for family housing. The runway is currently used as a general aviation practice landing airfield. These general aviation practice exercises will be displaced. Alternatives include: No Action (build no new housing and have families find

housing elsewhere, either in existing military housing or in the private sector); construct 1,200 housing units on Ford Island, which most likely would consist of a mixture of low and mid-rise buildings; and construct about 600 to 700 units on Ford Island and accommodate the remaining units in existing military housing areas, new military housing at other locations, or in the private sector. An alternative site considered for development in lieu of Ford Island is the Manana, land and Pearl City Junction, which are the only large tracts of Navy-owned land near the Naval Base. Another alternative to the development of Ford Island would be increased development on the Naval Station by the building of high-rise structures and more buildings with the concurrent loss of open space and parking.

Operational and Personnel Support Facilities

The following projects will be required to support the homeporting of a battleship and two cruisers in response to recommendations of the Base Realignment and Closure Commission, and Congressional mandate. Proposed facilities include the upgrading of Berth F–5 and construction of a new pier outboard from the existing pier on Ford Island to accommodate the battleship, including maintenance dredging, utilities improvements and shore support facilities; upgrading the fender system at Wharf Bravo herths B20 and B21, and upgrading shore power outlets and electrical distribution at berths B23 and B24 to accommodate the two cruisers; new fender systems along berths B15 and B18, and upgrading shore power outlets and electrical distribution at berth B25 and Mike Dock M3 to support the two cruisers; a 4,800 square foot pre-engineered building at Naval Shipyard Pearl Harbor to store parts for the homeported battleship; a 7,200 square foot addition to the Applied Instruction Building (Building 1377) at the Naval Station to provide additional training and administrative space required for Mobile Technical Unit One (MOTU–1); three new buildings at the Naval Station to house transient enlisted personnel, administrative and shop space for the Transient Personnel Unit (TPU), and enlisted personnel assigned to the station; a 5,500 square foot addition to the club on Ford Island (Building 38) to house a snack bar, restrooms, and storage; and Fleet Shoreside Support Center on Ford Island consisting of an amusement center, laundromat, outdoor basketball/volleyball courts, playing fields and racquetball courts.

Alternatives to these proposed Operational and Personnel Support Facilities include postponing the action and using other locations for specific projects. For the proposed Applied Instruction Building Addition, two specific alternatives have been considered: Different design, and training of ship personnel on the west coast. An additional alternative to the proposed TPU unit/BEQ is the use of civilian accommodations. In accordance with provisions of the Base Realignment and Closure Act of 1988, the No Action alternative will not be considered in this EIS for these proposed facilities.

Extensive comprehensive studies and surveys were conducted in support of the DEIS. These studies were on various subject areas, such as marine biology, physical oceanography and water quality, historic and archaeological sites, air quality, noise, traffic, navigation, aesthetics, and socioeconomic impacts. The DEIS provides the result of these studies and describes the impacts of the proposed actions and the mitigative measures proposed.

Dated: April 19, 1990.

Sandra M. Kay

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 90–9422 Filed 4–23–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Postsecondary Education Improvement Fund National Board

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education; Education Department.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: May 10, 1990 from 8 a.m. to 5 p.m. and on May 11, 1990 from 8 a.m. to 5 p.m.

ADDRESSES: Georgetown University Conference Center, The Thomas and Dorothy Leavey Center, 3800 Reservoir Road NW., Washington, DC 20057.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets SW., Washington, DC 20202 (202) 732–5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, title X (20 U.S.C. 1135a-1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board is closed to the public. The meeting is for the purpose of reviewing and evaluating grant applications submitted to the Fund under the Comprehensive Program.

The meeting of the National Board will be closed to the public from 8 a.m., May 10 until the conclusion of the agenda, approximately 5 p.m., May 11. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. appendix 2) and under exemptions (4) and (6) of the Government in the Sunshine Act (Pub. L. 94–409; 5 U.S.C. 552b(c)(4 and 6). The review and discussions of the applications and the qualifications of proposed staff to work on these grants is likely to disclose commercial or financial information obtained from a person and privileged or confidential or information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, room 3100, Regional Office Building #3, 7th & D Streets SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Leonard L. Haynes, III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–9433 Filed 4–23–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-313-000 *et al.*]

Public Service Company of New Mexico et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

April 16, 1990.

Take notice that the following filings have been made with the Commission:

1. Public Service Company of New Mexico

[Docket No. ER90-313-000]

Take notice that on April 5, 1990, Public Service Company of New Mexico (PNM) tendered for filing a Construction and Transmission Service Agreement and an associated Letter Agreement among the United States Bureau of Reclamation (Reclamation), Navajo Agricultural Products Industry (NAPI), United States Bureau of Indian Affairs (BIA) and PNM. Under this agreement, PNM has constructed a new substation and 7.5 miles of 230 kV transmission line, and provides 75 MW of bilateral transmission service between the Four Corners Generating Station and the PNM substation. This transmission service provides a path for power and energy for the Navajo Indian Irrigation Project.

PNM requests waiver of the Commission's notice requirements to permit the Agreement, as clarified by the Letter Agreement, to become effective as of September 1, 1977.

Copies of the filing have been served upon Reclamation, BIA and the New Mexico Public Service Commission.

Comment date: April 30, 1990, in accordance with Standard paragraph E at the end of this notice.

2. Western Area Power Administration

[Docket No. EF90-5161-000]

Take notice that on April 5, 1990, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA-44, did confirm and approve on an interim basis, to be effective on April 1, 1990, Western Area Power Administration's (Western) Power Rate schedule SNF-3 for the Stampede Division, Washoe Project (Stampede). The power rates will be in effect pending the Commission's approval of them, or substitute rates, on a final basis, or until superseded.

Under Rate Order No. WAPA-44, Western is establishing an annual bidding process for Stampede nonfirm energy. Annual bids for Stampede generation will be considered only if they meet the minimum rate (or floor rate) Western considers necessary to meet the expense of operating the plant. Western will also calculate the conventional cost-based rate necessary to meet the Stampede repayment obligation. This rate will be considered the highest necessary bid (or ceiling rate) for the Stampede energy. The range of rates that Western will consider for Stampede nonfirm energy will be calculated annually. Western will annually issue a public notice in appropriate publications in the region, as well as letters to customers and interested parties, to the effect that Stampede nonfirm energy is available to the highest bidder at a rate ranging between the established floor and ceiling rates contained in the public notice. Entities interested in purchasing the Stampede energy will submit bids to Western indicating the rate they are willing to pay within these parameters. The purchasers will pay for Stampede nonfirm energy at the Stampede Powerplant Substation, except for the energy designated to service project-use loads.

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates consistent with sound business principles. The Deputy Secretary states that the rate schedules are submitted for confirmation and approval on a final basis for a 5-year period beginning April 1, 1990, pursuant to authority vested in the Federal Energy Regulatory Commission by Amendment No. 1 to Delegation Order No. 0204-108.

Comment date: May 1, 1990, in accordance with Standard paragraph E at the end of this notice.

3. Virginia A. Dwyer

[Docket No. ID-2472-000]

Take notice that on April 9, 1990, Virginia A. Dwyer (Applicant) tendered for filing under section 305(b) of the Federal Power Act to hold the following positions:

Director, Georgia Power Company
Director, Eaton Corporation

Comment date: May 3, 1990, in accordance with Standard paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. E-7777-011 and Project No. 67]

Take notice that on March 30, 1990, Southern California Edison Company (Edison) tendered for filing an offer of settlement in the above referenced docket. Edison states that this settlement is embodied in the Settlement Agreement between Southern California Edison Company and the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California.

Comment date: April 30, 1990, in accordance with Standard paragraph E at the end of this notice.

5. Nantahala Power and Light Company

[Docket No. ER90-312-000]

Take notice that on April 3, 1990, Nantahala Power and Light Company (Nantahala) tendered for filing the 1989 revised "PL" (COSAC) rate tariff pursuant to the Settlement Agreement in Docket No. ER80-574.

Nantahala states that the report shows the development charges, the capitalization data, and the appropriate support data for the year ended December 31, 1989.

Comment date: April 30, 1990, in accordance with Standard paragraph E at the end of this notice.

6. Alabama Power Company

[Docket No. ER90-316-000]

Take notice that on April 9, 1990, Alabama Power Company tendered for filing Twenty-Sixth Revised Sheet No. 37 to its FERC Electric Tariff, Original Volume No. 1 and withdrew effective April 1, 1990, Twenty-fifth Revised Sheet No. 37 to reflect the termination of wholesale electric service to Central Alabama Electric Cooperative, Inc.'s Prattville Delivery Point on March 31, 1990.

Copies of the filing were served upon Alabama Electric Cooperative, Inc., agent for Central Alabama Electric Cooperative, Inc.

Comment date: April 30, 1990, in accordance with Standard Paragraph E end of this notice.

7. Semass Partnership

[Docket No. ER90-317-000]

Take notice that on April 9, 1990, Semass Partnership (SEMASS), a qualifying small power production facility tendered for filing as a rate schedule change an executed Amendment to Power Sale Agreement for SEMASS Expansion dated as March 14, 1990 (the Amendment), between SEMASS and Commonwealth Electric Company (CEC). The Amendment relates to the Power Sale Agreement for SEMASS Expansion dated January 15, 1988 (the PSA-II) between SEMASS and CEC which was accepted for filing by the Commission on February 16, 1989 (ER89-174-000). SEMASS is subject to the Commission's ratemaking jurisdiction because its power production capacity is in excess of 30 megawatts. SEMASS also requests

waiver of the Commission's regulations requiring that rate schedules be submitted no more than 120 days before the rates are to become effective.

The Amendment amends two provisions of the PSA–II. The first amended provision relates to the amount of alternate fuel which must be stored on site by SEMASS. The second amended provision extends by six months the date by which the in-service date for the expansion unit must occur.

Copies of the filing were served upon CEC and the Massachusetts Department of Public Utilities.

Comment date: April 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Public Service Corporation

[Docket No. ER90–314–000]

Take notice that on April 5, 1990, Wisconsin Public Service Corporation (WPS) tendered for filing a proposed T–1 Transmission Tariff, providing for both firm and non-firm transmission services. Currently, there are no customers who have executed service agreements under the tariff. However, in order to facilitate the availability of service, WPS has requested waiver of notice and an effective date of April 5, 1990.

Wisconsin Public Service Corporation states that the proposed tariff was developed with input from a number of potentially affected customers. Copies of the filing were served upon those customers who have expressed an interest in obtaining transmission service, upon the Public Service Commission of Wisconsin and upon the Michigan Public Service Commission.

Comment date: April 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Maine Public Service Company

[Docket No. ER90–310–000]

Take notice that on April 4, 1990, Maine Public Service Company (Maine Public) tendered for filing a proposed initial rate schedule pertaining to a Purchase Agreement (Agreement) between Maine Public and New England Power Service Company (New England) for the sale of capacity and energy to New England. Under this Agreement, Maine Public will sell its full entitlement to capacity and energy from Wyman Unit No. 4 to New England for the four month period beginning May 1, 1990 and ending August 31, 1990. Maine Public has requested that the rate schedule become effective May 1, 1990 and that it be cancelled on August 31, 1990, in accord with the terms of the Agreement.

Comment date: April 30, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–9372 Filed 4–23–90; 8:45 am]

BILLING CODE 6717–01–M

Project No. 10821–000 California

Camp Far West Transmission Line; Availability of Environmental Assessment

April 17, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for transmission line license for the existing Camp Far West Transmission Line Project located in Placer and Yuba Counties, near Sheridan, California, and has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed action and has concluded that approval of the proposed action, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3006, of the Commission's office at 941 North Capitol Street NE., Washington, DC 20426.

Lois Cashell,

Secretary.

[FR Doc. 90–9373 Filed 4–23–90; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 588–000]

James River II, Inc.; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

April 17, 1990.

The license for the Glines Canyon Project No. 588, located on the Elwha River in Clallam County, Washington, expired on June 3, 1976. The statutory deadline for filing applications for new license was June 3, 1974. An application for new license has been filed as follows:

Project No.	Applicant	Contact
P–588–000	James River II, Inc.	Ms. Priscilla W. Derick, Perkins Coie, 411–108th Avenue NE., suite 1800, Bellevue, WA 98004, (206) 453–6980.

Pursuant to section 15(c)(1) of the Federal Power Act, the deadline for the applicant to file final amendments, if any, to its application is June 30, 1990.

The following is an approximate schedule and procedures that will be followed in processing the application.

Date	Action
Aug. 30, 1990	Applicant files endangered species data in response to Commission additional information request dated February 1, 1990.
Nov. 30, 1990	Commission issues draft environmental impact statement (EIS).
Dec. 30, 1991	Commission issues final EIS.

Upon receipt of the additional information and the comments filed in response to the draft and final EIS's, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action.

Any questions concerning this notice should be directed to Mr. James Hunter at (202) 357–0843.

Lois D. Cashell,

Secretary

[FR Doc. 90–9375 Filed 4–23–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI89-348-003]

NATGAS U.S. Inc.; Application To Amend a Blanket Certificate With Pregranted Abandonment

April 17, 1990.

Take notice that on April, 6, 1990, NATGAS U.S. INC. [NATGAS] of 500, 707 Eighth Avenue, SW., Calgary, Alberta, Canada T2P 3V3, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend its blanket unlimited-term certificate with pregranted abandonment to authorize, without rate restrictions, sales for resale of gas purchased through interruptible pipeline sales of surplus system supply and imported natural gas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 7, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NATGAS to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-9376 Filed 4-23-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI90-87-000]

Nortech Energy Corp.; Application for a Blanket Certificate With Pregranted Abandonment

April 17, 1990.

Take notice that on April 9, 1990, Nortech Energy Corporation (Nortech) of 1900 West Loop South, suite 1410, Houston, Texas 77027, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited term blanket certificate with pregranted abandonment to authorize sales in interstate commerce for resale of natural gas from any source, domestic or foreign, and in gaseous or liquid form, including gas purchased from non-first-sellers, to the extent such sales would be subject to the Commission's jurisdiction, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 7, 1990, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Nortech to appear or to be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-9377 Filed 4-23-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 90-20-NG]

Boston Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on March 27, 1990, of an application filed by Boston Gas Company (Boston Gas) for blanket authorization to import up to 36.5 Bcf of Canadian natural gas per year, not to exceed 100,000 Mcf daily, over a two-year period beginning on the date of the first delivery. Boston Gas indicates that no new facilities would be necessary to implement the proposed import and that it would submit quarterly reports to FE within 30 days after the end of each calendar quarter detailing each transaction.

The application was filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.d.t., April 24, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Perry Bolger, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H-055B, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1789.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Boston Gas, a Massachusetts corporation, is a wholly-owned subsidiary of Eastern Enterprises. Under the blanket authority sought, Boston Gas would import natural gas from Canada for its own account and seeks authority to import gas at any existing delivery point on the international border. The specific terms of each import transaction would be negotiated on an individual basis in response to prevailing gas market conditions. In support of its application, Boston Gas asserts that its transactions would be premised upon the imported gas being competitive with other supply alternatives, and that, if not, there would be no imports. Boston Gas requests that an import authorization be granted on an expedited basis.

The decision on the application for import authority will be made consistent with the DOE's natural gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines for the requested import authority. The applicant asserts that imports made under this requested arrangement will be competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

All parties should be aware that if this blanket import application is granted, the authorization may permit the import of the gas at any international border point where existing transmission facilities are located. A decision on Boston Gas's request for expedited treatment of its application will not be made until all responses to this notice have been received and evaluated.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices on intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the above address.

It is intended that a decisional record will be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, a notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Boston Gas's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8 a.m., and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 19, 1990.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 89–9484 Filed 4–23–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During Week of February 12 Through February 16, 1990

During the week of February 12 through February 16, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Ben A. Franklin, 2/13/90, LFA–0023

Ben A. Franklin filed an Appeal from a determination issued by the Chief of FOI and Privacy Acts Branch of the Office of Administrative Services of the Department of Energy (DOE) of a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE decided the status of a copy of a "book" of documents concerning the nomination of Victor Stello to be Assistant Secretary of Energy for Defense Programs which was located at DOE's Forrestal Building headquarters. The DOE found that Mr. Stello had personally prepared and maintained custody of the "book" and that it did not deal with DOE events. Because the "book" was not created by the DOE and never part of DOE files, the agency was not in possession of the "book" at the time Mr. Franklin made his request. For this reason the DOE determined the "book" was neither "withheld" nor an "agency record" within the meaning of the FOIA.

Refund Applications

Brunswick Pulp and Paper Co., 2/14/90, RF272–2198, RD272–2198

The DOE issued a Decision and Order concerning an Application for Refund filed by Brunswick Pulp and Paper Co. (Brunswick) in the subpart V crude oil refund proceeding. Brunswick was a pulp and paper manufacturer that used refined petroleum products in the course of its business activities. The DOE found no support for the contentions of a group of States and Territories that Brunswick had passed through the crude oil overcharges. Accordingly, the DOE decided that the applicant was entitled to rely upon the end-user presumption of injury in this proceeding, and that the States' Motion for Discovery should be denied. The total refund granted was $154,329.

R.E. Hable Co., et al., 2/14/90, RF272–41153, et al., RD272–41153, et al.

The DOE issued a Decision and Order concerning six Applications for Refund filed in the crude oil subpart V special refund proceeding. The DOE determined that the refund claims were meritorious and granted refunds totalling $176,671. The DOE also denied Motions for Discovery filed by a consortium of States and Territories and rejected their challenges to the claims, finding that the industry-wide econometric data submitted by the States did not rebut the presumption that the Applications were injured by the crude oil overcharges.

Dismissals

The following submissions were dismissed:

Name	Case No.
Balteau Standard Inc	RF272–76996
Carillo Exxon	RF307.241
Carr's Gulf	RF300–7254
Collins Spur Station	RF309–1345
Duane's Arco Service	RF304–8245
Educated Car Wash #1	RF304–10633
Eton Shell Service	RF315–4836
Fort Bend Independent School District.	RF272–76125
G.A. Norris Butane Co., Inc	RF300–7215
Gra-Pat Gulf Mini-Mart	RF300–7279
Gulf States Asphalt Co	RF307–10022
Gull Oil Company	RF318–7
Hardy Hill Grocery	RF241–7

Name	Case No.
Harry's Exxon Station	RF307-9769
Hoffman Pilot Center, Inc	RF272-68522
Nature Gem	RF272-70260
Islandia Association, Ltd	RF304-10985
Malcho Arco Service #2	RF304-8995
Malcho Arco Service #3	RF304-8996
Metropolitan Park District	RF272-76198
Nick's Arco	RF304-136
Redington Gulf Service	RF300-7276
Sid's Spur	RF309-1367
Stew's Gulf Service	RF300-7272
Via Convenience Store	RF241-9
Vista Palms Car Wash	RF304-10780
Windlinger Petroleum	RF315-4951
Worcester Hahnemann Hospital	RF41060

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

April 17, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-9485 Filed 4-23-90; 8:45 am]

BILLING CODE 6450-01-M

Notice of Issuance of Decisions and Orders During Week of March 19 Through March 23, 1990

During the week of March 19 through March 23, 1990 the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Petition for Special Redress

New York, 3/22/90, *LEG-0001*

The DOE issued a Decision and Order denying a Petition for Special Redress filed by the State of New York in which the State appealed an earlier determination by the DOE's Assistant Secretary for Conservation and Renewable Energy. The Assistant Secretary had determined that one of the proposed programs for which New York had requested Stripper Well monies, the Oil Energy Conservation Program, was ineligible for funding because it promoted environmental concerns rather than energy efficiency. This program would provide matching grants to firms which would locate and plug abandoned oil wells in the State's old oil field area. In its Petition, the State argued that the program should be approved because the plugging of old oil wells would conserve oil remaining in the reservoirs, and therefore conserve energy. The OHA disagreed, stating that the program's major benefit would be environmental, as unplugged oil wells can cause groundwater pollution, and that the earlier determination had been correct. Accordingly, the State's Petition was denied.

Refund Applications

Atlantic Richfield Co./Gilray Oil Co., Ameroil Corp., 3/20/90, *RF304-9311, RF304-11540*

The DOE issued a Decision and Order rescinding a portion of a refund improperly granted the Ameroil Corp. on November 14, 1989, and granting a refund to its proper recipient, Mrs. Clartrude Gilmer. Because Ameroil had purchased the assets of Gilray Oil Company from Mrs. Gilmer's late husband on November 1, 1975, it was eligible to receive a refund for refined products purchases made after November 1, 1975. Mrs. Gilmer was determined to be the appropriate recipient of a refund for product purchased prior to November 1, 1975. Ameroil was directed to remit a total of $3,974 to the Department of Energy including $45 in accrued interest. Mrs. Gilmer was granted a refund totalling $4,035 including $1,079 in interest.

Atlantic Richfield Co./Kavanaugh & Van Fleet, Inc., 3/20/90, *RF304-2102*

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Kavanaugh & Van Fleet, Inc. Kavanaugh & Van Fleet, Inc. adequately documented the volume of its purchases of ARCO middle distillates. The Applicant was a retailer requesting a refund of $5,000 or less. The refund granted in this Decision totalled $3,293 representing $2,412 in principal and $881 in accrued interest.

Central Steel & Wire Co., 3/22/90, *RF272-6123, RD272-6123*

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Central Steel & Wire Company based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of twenty-eight states and two territories of the United States (the States) filed a pleading objecting to and commenting on the application. The States submitted an affidavit by an economist stating that industrial firms were able to pass through all costs to its customers. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. In addition, the States filed a Motion for Discovery which was denied. The refund granted in this Decision is $5,465. Central Steel & Wire Company will be eligible for additional refunds as additional crude oil overcharge funds become available.

Exxon Corp./American Can Co., 3/22/90, *RF307-1511, RF307-8310, RF307-8818, RF307-10106, RF307-10111*

The DOE issued a Supplemental Decision and Order in the Exxon Corporation special refund proceeding regarding American Can Co. (American). James River Corporation of Virginia (James River) purchased American's paper operating division and filed three Applications for Refund based on purchases of Exxon refined petroleum products by American. The DOE determined that these applications should be denied because James River purchased American's paper operating division subsequent to the consent order period and there was no indication that the right to a refund was transferred to James River. In addition, the DOE had previously issued two Decisions granting James River refunds for Exxon refined petroleum products used at the American facilities in Fort Smith, AR and Lexington, KY. The DOE reconsidered these Decisions and determined that the refunds granted to the Fort Smith and Lexington facilities should be rescinded.

Gulf Oil Corp./Charles Gulf Station, Dave Gulf, 3/22/90, *RF300-9904, RF300-9943*

The DOE issued a Decision and Order concerning two Applications for Refund submitted originally by P.A.D., Inc. in the Gulf Oil Corporation special refund proceeding. Fuel Refunds, Inc. filed an "Amended Refund Application" on behalf of Dave Gulf. Furthermore, Akin Energy, Inc. also filed an "amended" refund Application on behalf of both Charles Gulf Station and Dave Gulf. All correspondence including the refund checks, was sent directly to the applicants. Each Application was approved using a presumption of injury. Charles Gulf Station was granted a total refund of $1,324 and Dave Gulf was granted a total refund of $1,293.

Hilde Construction Co., Inc., W.E. Blain & Sons, Inc., 3/21/90, *RF272-24803, RF272-25368*

Hilde Construction Co., Inc. (Hilde) and W.E. Blain & Sons, Inc. (Blain) are both highway construction contractors. Each filed an application for refund as an end-user of refined petroleum products in the Subpart V crude oil

refund proceeding. A group of state governments filed statements of objection to their claims, and related motions for discovery. The applicants demonstrated the volume of their claims by consulting actual records and by using reasonable estimates of their purchases. OHA found, however, that Blain had entered into several contracts during the period of price controls which contained price adjustment clauses. The firm had received compensation for approximately 5% of its purchases, or 453,866 gallons, of middle distillates and liquid asphalt during the period of October 1, 1977 through January 27, 1981 as a result of those clauses. Blain was not injured in those instances and is ineligible to receive a refund for the purchases covered by such clauses. Blain was not injured in those instances and is ineligible to receive a refund for the purchases covered by such clauses. After considering the remaining claims and the objections, OHA determined that the States had failed to produce any convincing evidence to show that either Hilde or Blain had been able to pass on the crude oil overcharges to their customers, and granted the refund applications. The purported economic "evidence" submitted by the states consisted of theoretical generalizations that were not linked to the specific applicants. As in previous decisions, OHA rejected the states' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Hilde and Blain were injured by crude oil overcharges. OHA granted Hilde a refund of $38,328, and granted Blain a refund of $21,853. The States' motion for discovery was denied.

Murphy Oil Corp./Brenner Oil Co. et al., 3/22/90, RF309–277 et al.

The DOE issued a Decision and Order denying refunds to six claimants in the Murphy Oil Corporation special refund proceeding. Each applicant had been tentatively identified as a spot purchaser of Murphy products after an examination of its purchase volume schedule. Each applicant was then notified of this determination by the OHA. One of the applicants argued that it was not a spot purchaser even though it had purchased Murphy products for only one year because it had purchased a substantial amount from Murphy. The OHA rejected that argument, stating that the amount that the applicant had purchased was irrelevent, as it had purchased from Murphy because it had the discretion to do so, and it had not shown that the product was sold at a loss that it did not later recover. The other applicants either confirmed that they had been spot purchasers of Murphy products, stated that they were unable or unwilling to rebut the presumption, or did not respond to repeated inquiries from this Office. Accordingly, the six applications were denied.

Murphy Oil Corp./ETNA Oil Co. et al., 3/22/90, RF309–20 et al.

The DOE issued a Decision and Order denying 25 Applications for Refund in the Murphy Oil Corporation special refund proceeding. Each applicant purchased Murphy petroleum products on a sporadic basis and was preliminary identified as a spot purchaser. Each applicant either agreed with its identification as a spot purchaser or chose not to reply to a letter from the DOE explaining its identification as a spot purchaser. Since none of the applicants attempted to (1) establish that they were regular purchasers of Murphy petroleum products, or (2) rebut the spot purchaser presumption of non-injury, their refund applications were denied.

The Hemmerdinger Corp., 3/22/90, RF272–6133, RD272–6133

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to The Hemmerdinger Corporation (Hemmerdinger) based on its purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of twenty-eight states and two territories of the United States (the States) filed a pleading objecting to and commenting on the application. The States contended that Hemmerdinger, a residential property management company, was able to pass through all overcharges to its tenants. Hemmerdinger acknowledged that it passed on the increased costs associated with 50 percent of its heating oil purchases. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury concerning Hemmerdinger's remaining heating oil purchases and that the applicant should receive a refund for 50 percent of its purchases. In addition, the States filed a Motion for Discovery which wan denied. The refund granted in this Decision is $2,965. Hemmerdinger will be eligible for additional refunds as additional crude oil overcharge funds become available.

Union Camp Corp., ITT Rayonier, Inc., 3/19/90, RF272–387, RD272–387, RF272–406, RD272–406

The DOE issued a Decision and Order concerning two Applications for Refund filed in the subpart V crude oil overcharge refund proceeding by Union Camp Corporation and ITT Rayonier, Inc., two manufacturers of paper products that were end-users of refined petroleum products. The DOE found no support for the contentions of a group of U.S. States and Territories that the applicants have passed through the crude oil overcharges. Nor did the DOE find that augmentation of the cases through discovery was appropriate. As a result, the State's Motions for Discovery were denied. The DOE decided that the applicants were entitled to rely on the end-user presumption of injury. Union Camp Corporation was granted a total refund of $633,651 and ITT Rayonier, Inc. was granted a total refund of $516,530.

UPG, Inc./Southwestern Electric Power Co., 3/21/90, RF288–3

The DOE issued a Decision and Order concerning an Application for Refund submitted in the UPG, Inc. special refund proceeding (UPG) by Southwestern Electric Power Company. Because the Application was filed more than two years after the filing deadline for applications in UPG had passed and because the funds remaining in the UPG consent order escrow account had been used to satisfy the requirements of the Petroleum Overcharge Distribution and Restitution Act of 1986, this Application was dismissed.

Refund Applications

The Office of Hearings and Appeals granted crude oil overcharge refunds to refund applicants in the following Decisions and Orders:

Name	Case No.	Date
Allen Hofland *et al*	RF272-30217	3/20/90
Getty Oil Co./Brown's Westgate.	RF265-2871	3/22/90
Gulf Oil Corp./Beighley Gulf Station *et al.*	RF300-8146	3/22/90
Gulf Oil Corp./Modern Oil Co.	RF300-7128	3/19/90
Gulf Oil Corp./P.S. Potter & Son.	RF300-4164	3/19/90
Gulf Oil Corp./W.R. Grace Transportation Services, Inc.	RF300-9843	3/19/90
W.R. Grace Agricultural Chemicals Group.	RF300-9843	3/19/90
Shell Oil Co./Sears, Roebuck, & Co. *et al.*	RF315-9200	3/20/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Carr Trucking Co	RF300-9842
I-5 Exxon	RF307-9886
Natural Resources Defense Council.	HFA-0278
Nicholson Shell Service	RF315-9776

Name	Case No.
San Marcos Exxon & Muffler Shop	RF307-5127
T.S.C. Express Co	RF300-9639
Waters Oil Company	RF307-10103
25th Street Beer-Soda Inc	RF300-8517

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m, except federal holidays. They are also avilable in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: April 17, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-9486 Filed 4-23-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Science Advisory Board

[FRL-3757-7]

Clean Air Scientific Advisory Committee; Open Meeting

Under Public Law 92-463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) will hold a public meeting on May 8, 1990 in the Administrator's Conference Room, room 1103 West Tower, U.S. EPA Headquarters, 401 M Street SW., Washington, DC 20460. The meeting will begin at 8:30 a.m. and will end at 3 p.m.

This is an annual meeting of the statutory members of CASAC conducted for the purpose of planning the Committee's future activities. The meeting will include briefings from Agency staff on the status of: (a) Previous CASAC advice on issues such as acid aerosols, (b) upcoming reviews for the national ambient air quality standards (NAAQS), and (c) the Clean Air Act Amendments that concern the role of the Committee.

There are no review documents for this meeting nor will the Committee file a formal report following the meeting. Members of the public who wish to attend should contact Ms. Carolyn Osborne, Secretary to the Committee, to obtain copies of the draft agenda and the roster of the statutory members. For further information concerning the Committee or its activities, please contact Mr. Robert Flaak, Designated Federal Official to the Committee. Mr. Flaak or Ms. Osborne may be contacted at (202) 382-2552, FAX (202) 475-9693, or by mail at US EPA, Science Advisory Board (A-101F), Washington, DC 20460. Seating is limited due to the size of the room and will be on a first come basis.

Dated: April 13, 1990.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 90-9455 Filed 4-23-90; 8:45 am]

BILLING CODE 6560-50-M

[SW-FRL-3757-8]

Municipal Waste Combustion (MWC) Ash; Characterization of MWC Ashes, Extracts, and Leachates From MWC Ash Disposal Units

AGENCY: U.S. Environmental Protection Agency, EPA.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today announcing the availability of a report entitled "Characterization of Municipal Waste Combustion (MWC) Ash, Ash Extracts, and Leachates." This report was co-sponsored by EPA and the Coalition on Resource Recovery and the Environment to enhance the data base on the characteristics of MWC ashes, laboratory extracts of MWC ashes, and leachates from MWC ash disposal units. This report presents the results of a study of combined bottom and fly ash from five state-of-the-art municipal waste combustors. Leachate samples from the corresponding ash disposal units were also collected. The ash and leachate samples were analyzed from appendix IX semivolatile compounds, dioxins and dibenzofurans, metals, and several conventional compounds. The ash samples were also subjected to six laboratory extraction procedures and the extracts were analyzed for the same compounds.

The study results indicate low concentrations of dioxins/dibenzofurans and appendix IX semivolatile compounds in the ash and leachates. None of the landfill leachate samples exceeded Toxicity Characteristic regulatory levels established for the eight metals under 40 CFR 261.24. The regulatory levels for lead and cadmium were frequently exceeded by the extracts from the EP and TCLP tests. None of the extracts from the other leaching procedures which were designed to simulate an ash monofill situation, exceeded the regulatory levels.

The data support the following conclusions:

—Ash frequently fails EPA-approved tests for determining whether wastes are regulated as hazardous, because it leaches lead and cadmium at levels of concern.

—The disposal of ash in a well-designed monofill greatly reduces the leachability of constituents of concern such as lead and cadmium.

Although the data indicate that ash frequently fails the test used to determine whether a waste is hazardous, there has been considerable controversy over whether Congress intended to exempt MWC ash (from energy recovery facilities) from hazardous waste controls. Two recent court decisions ruled that ash is exempt from regulation as a hazardous waste. These cases are expected to be appealed.

Regardless of the outcome of these cases, Congress is considering legislation that would regulate all ash as a special waste and require stringent management controls for ash, from the point of its generation through disposal or recycle. EPA continues to support such legislation so that all ash can be handled in a manner which protects human health and the environment.

ADDRESSES: This report is available for viewing at all EPA libraries and in the EPA RCRA Docket room, U.S. Environmental Protection Agency (EPA), 401 M Street SW., Washington, DC 20460, from 9 a.m. to 4 p.m., Monday through Friday, except legal holidays; telephone (202) 475-7230. The public may copy a maximum of 50 pages of material from any regulatory docket at no cost. Additional copies cost 20 cents per page. The document may be purchased from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia, 22161 at (703) 487-4600: "Characterization of Municipal Waste Combustion (MWC) Ash, Ash Extracts, and Leachates" (EPA/530-SW-90-029A, NTIS No.: PB90-187154DJ. A copy of the Executive Summary (EPA/530-SW-029B) and Fact Sheet is available free of charge through the RCRA Hotline at (800) 424-9346 or (202) 382-3000.

FOR FURTHER INFORMATION CONTACT: For general information and/or a copy of the Executive Summary, call the RCRA Hotline at (202) 382-3000 or toll free at (202) 382-3000. For technical information on the report, contact Doreen Sterling, Office at Solid Waste (OS-301), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-3346.

Dated: April 12, 1990.

Don R. Clay,

Assistant Administrator.

[FR Doc. 90-9454 Filed 4-23-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59280C; FRL 3738-8]

Certain Chemicals Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-90-3. The test marketing conditions are described below.

EFFECTIVE DATE: April 12, 1990.

FOR FURTHER INFORMATION CONTACT: Darlene Jones, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, D.C. 20460, (202) 382-2279.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-90-3. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met. -

The following additional restrictions apply to TME-90-3:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who may be exposed to the substance dermally or by inhalation shall use: -

a. Gloves determined by the Company to be impervious to the substance under the conditions of exposure, including the duration of exposure. The Company shall make this determination either by testing the gloves under the conditions of exposure or by evaluating the specifications provided by the manufacturer of the gloves. Testing or evaluation of specifications shall include consideration of permeability, penetration, and potential chemical and mechanical degradation by the PMN substance and associated chemical substances; -

b. Chemical safety goggles or equivalent eye protection; and -

c. National Institute of Occupational Safety and Health (NIOSH)-approved category 19C respirator.

3. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Contact with skin may be harmful. Chemicals similar in structure to (insert appropriate name) have been found to cause lung toxicity, pulmonary sensitization and irritation to membranes and oncogenicity. To protect yourself, you must wear impervious gloves, chemical goggles, and a NIOSH-approved 19C respirator.

4. -The Company must obtain or develop an Material Safety Data Sheet (MSDS) for the PMN substance. -

a. The MSDS shall contain, at a minimum, the same warning statement required to be on the label. -

b. The Company must ensure that persons receiving the PMN substance from the Company are provided an appropriate MSDS with their initial shipment and with the first shipment after an MSDS is revised. The Company may either provide the MSDS with the shipped containers or send it to the person prior to or at the time of shipment. -

c. The Company must obtain a copy of the MSDS in its workplace, and must ensure that it is readily accessible during each work shift to employees when they are in their work areas.

5. The applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA: -

a. Records of the quantity of the TME substance produced and the date of manufacture. -

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment. -

c. Copies of the labels affixed to containers of the substance or formulations containing the substance. -

d. Copies of the bill of lading that accompanies each shipment of the substance. -

e. Copies of any determination under paragraph 2.a. above that the protective gloves used by the Company are impervious to the substance.

TME-90-3

Date of Receipt: January 20, 1990.

Notice of Receipt: February 26, 1990 (55 FR 6679).

Applicant: Confidential.

Chemical: (G) Isocyanate Pre-Polymer.

Use: (G) Curing agent additive for surface coating.

Production Volume: (Confidential).

Number of Customers: (Confidential).

End of Test Marketing Period: July 1, 1990. -

Risk Assessment: EPA identified concerns for lung toxicity, pulmonary sensitization and irritation to membranes, and oncogenicity based on toxicity test data on other isocyanates. However, during manufacturing, processing, and use, exposure to workers will be prevented by the use of respirators, protective gloves, and goggles. Therefore, the test market activities will not present an unreasonable risk of injury to health. EPA identified no significant environmental concerns for the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to the environment.- -

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: April 12, 1990.

John W. Melone

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc. 90-9470, Filed 4-23-90; 8:45 am]

BILLING CODE 6560-50-D

[OPTS-59887; FRL 3711-9]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13,1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 3 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 90-182, April 17, 1990.

Y 90-183, April 18, 1990.

Y 90-184, April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-545, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 90-182

Importer. Confidential.

Chemical. (G) Tall oil fatty acid modified alkyd.

Use/Import. (G) Surface coating resin. Import range: 1,000-3,000 kg/yr.

Y 90-183

Manufacturer. Confidential.

Chemical. (G) Carbomonocyclic polyester.

Use/Production. (S) Injection molded parts. Prod. range: Confidential.

Y 90-184

Manufacturer. Reichhold Chemicals Inc.

Chemical. (G) Unsaturated polyester resin.

Use/Production. (S) Base resin for cultured marble compositions. Prod. range: Confidential.

Dated: April 18, 1990.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 90-9463 Filed 4-23-90 8:45 am]

BILLING CODE 6560-50-D

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 14, 1990.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation,* New York, New York; to engage *de novo* through its subsidiary, BT Futures Corporation, New York, New York, in providing foreign exchange advisory and transactional services pursuant to § 225.25(b)(17) and in rendering investment advice on financial futures and options on futures pursuant to § 225.25(b)(19) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central-State Bancorp, Inc.,* Frankfort, Michigan; to engage *de novo* through its subsidiary, Central State Service Corp., Beulah, Michigan, in making and selling fixed rate mortgages in the secondary mortgage market pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 18, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-9418 Filed 4-23-90; 8:45 am]

BILLING CODE 6210-01-M

National Bank of Canada; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such

as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 1990.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Bank of Canada,* Montreal, Canada; to acquire National Canada Corporation 1987, New York, New York, which will acquire certain commercial finance assets of the Bank of New England, N.A., Boston, Massachusetts, and thereby engage in making, acquiring and servicing commercial finance loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 18, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-9419 Filed 4-23-90; 8:45 am]

BILLING CODE 6210-01-M

Carl D. Silver; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 8, 1990.

A. **Federal Reserve Bank of Richmond** (Fred L. Bagwell, Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Carl D. Silver,* Fredericksburg, Virginia; to acquire 19.99 percent of the voting shares of Fredericksburg National Bancorp, Fredericksburg, Virginia, and thereby indirectly acquire The National Bank of Fredericksburg, Fredericksburg, Virginia.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Martin Schifferdecker,* Girard, Kansas; to acquire an additional 0.8 percent of the voting shares of G.N. Bankshares, Inc., Girard, Kansas, for a total of 23.23 percent, and thereby indirectly acquire Girard National Bank, Girard, Kansas.

Board of Governors of the Federal Reserve System, April 18, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-9420 Filed 4-23-90; 8:45 am]

BILLING CODE 6210-01-M

Summit Bancorp, Inc., et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 14, 1990.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Summit Bancorp, Inc.,* Johnstown, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Summit Bank, Johnstown, Pennsylvania.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Summit Bancorp,* Akron, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Summit Bank, Akron, Ohio.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *The Merchants Holding Company,* Winona, Minnesota; to acquire 97 percent of the voting shares of La Crescent State Bank, La Crescent, Minnesota.

Board of Governors of the Federal Reserve System, April 18, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FRDoc. 90-9421 Filed 4-23-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 115 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons comtemplating certain mergers of acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 040290 AND 041390

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Holzstoff Holding A.G., James River Corporation of Virginia, Nonwovens Division of James River Corporation	90-1098	04/02/90
NKK Corporation, Silicon Graphics, Inc., Silicon Graphics, Inc	90-1109	04/02/90
Warburg, Pincus Investors, L.P., Donald Val Strough, Val Strough Chevrolet Co., Inc., California Carriage	90-1110	04/02/90
General Electric Company, CalFed Inc., Beneficial Standard Life Insurance Co. and Direct	90-1132	04/02/90
R.T. Holding Nederland, N.V., Universal Foods Corporation, Universal Foods Corporation	90-1145	04/02/90
Hawker Siddeley Group Public Limited Company, UNC Incorporated, Airwork Corporation and Pacific Airmotive Corporation	90-1162	04/02/90
JWP Inc., NEECO, Inc., NEECO, INC.	90-1133	04/03/90
CS First Boston, Inc., Sealy Holdings, Inc., Sealy Holdings, Inc	90-1203	04/06/90
Newmark & Lewis Inc., Brick Church Applicance, Inc., Brick Church Appliance of N.Y., Inc	90-1228	04/06/90
Mr. Kentaro Abe, Hemmeter-VMS Maui Company, The Westin Maui Hotel	90-1130	04/09/90
Emerson Electric Co., Westinghouse Electric Corp., Combustion Control Division	90-1136	04/09/90
Werner K. Rey Gilbert N. Michaels, G.N.M. Financial Services, Inc.	90-1160	04/09/90
Tsubakimoto Precision Products Co., Ltd., Hoover Group, Inc., Ball Products Division	90-1161	04/09/90
Swift Energy Company, Amoco Corporation, Amoco Production Company	90-1186	04/09/90
Philips N.V., Philips N.V., Laser Magnetic Storage International Company	90-1219	04/09/90
Air Wis Services, Inc., Aspen Airways, Inc., Aspen Airways, Inc.	90-1235	04/09/90
American Financial Corporation, The Circle K Corporation, New England Petroleum Distributors, Inc.	90-1248	04/09/90
Asahi Urban Development Corporation, Costa Verde Associates Limited Partnership, Costa Verde	90-1251	04/09/90
Jack D. Rutherford, William Farley, Farley Inc.	90-1165	04/10/90
David T. Shelby, William Farley, Farley Inc.	90-1166	04/10/90
Wilton R. Stephens, ALLTEL Corporation, ALLTEL Corporation	90-1220	04/10/90
Jackson T. Stephens, ALLTEL Corporation, ALLTEL Corporation	90-1221	04/10/90
ALLTEL Corporation, Jackson T. Stephens Systematics, Inc	90-1222	04/10/90
Sonat Exploration Company, Capital Management Services, Inc., Capital Management Services, Inc.	90-1094	04/11/90
Summagraphics Corporation, Ametek, Inc., Ametek, Inc	90-1181	04/11/90
Staveley Industries Plc, Howe Richardson Inc., Howe Richardson Inc	90-1213	04/11/90
Sony Corporation, Steve Mason, Important Record Distributors, Inc.	90-1175	04/12/90
MCA Inc., David Geffen, The David Geffen Company	90-1177	04/12/90
David Geffen, MCA Inc., MCA Inc	90-1185	04/12/90
Aktiebolaget Volvo, Pharmacia Aktiebolag, Pharmacia Aktiebolag	90-1246	04/12/90
Procordia Aktiebolag, Pharmacia Aktiebolag, Pharmacia Aktiebolag	90-1247	04/12/90
Banc One Corporation, Equimark Corporation, Equimark (Delaware), N.A	90-1249	04/12/90
The Oklahoma Publishing Company, American City Business Journals, Inc., American City Business Journals, Inc	90-0586	04/13/90
Imasco Limited, Marriott Corporation, MRO Mid-Atlantic Corporation	90-0960	04/13/90
Wyman-Gordon Company, The Interlake Corporation, Arwood Corporation	90-1167	04/13/90
Ford Motor Company, Great Western Financial Corporation, Blazer Financial Services, Inc., (WI)	90-1193	04/13/90
Thomas H. Lee, Philips N.V., Anchor Advanced Products Inc	90-1226	04/13/90
Thomas H. Lee, Anchor Acquisition Corp., Anchor Acquisition Corp	90-1233	04/13/90
AmeriFoods Companies, Inc., Harrison Baking Company, Harrison Baking Company	90-1237	04/13/90
Mitsui Real Estate Development Co., Ltd., Crow-Otay Mesa #1 Limited Partnership, Crow-Otay Partners, a California general partnership	90-1262	04/13/90
Mitsui Real Estate Development Co., Ltd., The Great-West Life Assurance Company, Crow-Otay Partners, a California general partnership	90-1263	04/13/90
Daishinpan Co., Ltd., Sonnenblick-Goldman Corp., Sonnenblick-Goldman Corp	90-1265	04/13/90
Cabot Corporation, Maurice J. Cunniffe, American Optical Corporation	90-1275	04/13/90
USX Corporation, Quantum Chemical Corporation, RMI Company (partnership)	90-1310	04/13/90
Quantum Chemical Corporation, USX Chemical Corporation, RMI Company (partnership)	90-1311	04/13/90

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-9437 Filed 4-23-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3285]

Nature's Way Products, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, the Springville, Utah distributors and advertisers of Cantrol from making any claims, contrary to fact, that a consumer can self-diagnose certain yeast conditions, and from making any claims without adequate substantiation concerning whether certain dietary, food, or nutritional supplements can cure, treat, or prevent certain yeast conditions. It also prohibits any unsubstantiated claims that six ingredients of the supplements affect any disease. The consent agreement requires respondents to pay $30,000 to the National Institutes of Health to support research in candidiasis or the effects of yeast organisms on health.

DATES: Complaint and Order issued April 10, 1990.[1]

FOR FURTHER INFORMATION CONTACT: Toby Levin, FTC/S-4002, Washington, DC 20580. (202) 326-3156.

SUPPLEMENTARY INFORMATION: On Monday, January 29, 1990, there was published in the **Federal Register**, 55 FR 2876, a proposed consent agreement with analysis In the Matter of Nature's Way Products, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 90-9436 Filed 4-23-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement No. 026]

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Research and Demonstration

Introduction

The Centers for Disease Control (CDC) announces that project grant applications are to be accepted for Sexually Transmitted Diseases (STD) Research and Demonstrations.

Authority

This program is authorized under section 318(b) of the Public Health Service Act (42 U.S.C. 247c(b)) as amended. Regulations governing programs for preventive health services are codified in part 51b, subparts A and F of title 42, Code of Federal Regulations.

Eligibility

Eligible applicants are the official public health agencies of State and local governments, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Federated States of Micronesia, Guam, the Republic of the Marshall Islands, the Northern Mariana Islands, the Republic of Palau, and the Virgin Islands, and any other public or nonprofit private entity. Thus, universities, colleges, research institutions, and hospitals are eligible to apply. In addition, to ensure statistically significant results, applicants applying for assistance in STD Research must have reported case rates of primary and secondary syphilis of at least 20 per 100,000 population for 1989, and at least 450 per 100,000 population for gonorrhea for 1989. Applicants who meet these eligibility conditions are encouraged to include other STD in their applications.

Availability of Funds

Approximately $900,000 is available in Fiscal Year 1990 to fund approximately 3 to 4 studies. It is expected that the average award will be $225,000, ranging from $150,000 to $350,000. Awards are expected to begin on or about September 15, 1990 for a 12-month budget period within a 1- to 3-year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this grant program is to develop, improve, and evaluate methods for the prevention and control of STD through demonstrations and applied research. Applied research, as used in the context of this announcement, means the process of developing and evaluating operational approaches and solutions to practical STD control problems by formulating appropriate models and hypotheses and testing them in the field.

Program Requirements

Applicants addressing the areas listed below will be considered for funding in Fiscal Year 1990:

A. Innovative Approaches to Clinical Care for STD

Develop, implement, and evaluate innovative and alternative approaches, at minimum cost over existing approaches, to the delivery of clinical care for STD in an era of increasingly complex health care delivery needs for STD. Such approaches include: (1) Reviewing existing public and private care-delivery services and medical sites (including STD clinics) to determine how quality care can be more efficiently delivered; (2) identifying geographic areas, populations, or institutions of potentially high STD morbidity and the development of innovative and alternative outreach activities (e.g., schools, detention centers) where new approaches would have an impact on STD. Various types of outcome measures could be used to show success of these programs. Ideally, diminished incidence of disease within the community, population, or institution would be one of these measures.

B. Role of Health Behaviors in STD Transmission

Develop, implement, and evaluate interventions to ensure the adoption of behaviors which minimize transmission and maximize timely, appropriate diagnosis and treatment of STD. This study should include health behavior data of community subjects from various socioeconomic and ethnic backgrounds attending a variety of medical facilities, both public and private, for STD services. Studies must include, but not be limited to, populations at highest risk of acquiring STD.

Evaluation Criteria

A. Competing applications will be reviewed and evaluated by a CDC-convened ad hoc committee according to the following criteria:

1. The appropriateness and feasibility of the project and the extent to which results may be transferred to other areas.

2. The degree to which long- and short-term objectives are specific, measurable, and time-phased.

3. The quality of the plan of operation for conducting and monitoring activities designed to meet project objectives, including the extent to which the proposed methods are innovative and do not replicate previous or current research.

4. The quality of the evaluation plan which specifies the methods and instruments of measurements to be used.

5. The extent to which qualified and experienced personnel are available, based on previous involvement with projects related to STD prevention and control and the extent to which the applicant has documented appropriate collaboration with local or State STD control programs, hospitals, medical schools, laboratories, and any other agencies where joint liaison efforts would enhance the success of the project.

Consideration will also be given to the extent to which the budget request is reasonable and consistent with the intended use of grant funds.

B. Non-competing applications within an approved project period will be evaluated on satisfactory progress in meeting program objectives as determined by progress reports and the quality of the future plans. Consideration will also be give to the extent to which the budget request is reasonable and consistent with the intended use of grant funds. Awards will be made based on the availability of funds.

Funding Priorities

Priority will be given to funding at least one application under each area listed under "Program Requirements."

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.978, Preventive Health Services-Sexually Transmitted Diseases Research, Demonstration, and Public Information and Education Grants.

Application Submission and Deadline

The original and two copies of the application (PHS form 5161-1) must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, on or before June 15, 1990.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier of U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

B. Late Applications

Applications which do not meet the criteria in A.1. or 2. are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

Information on application procedures and an application package may be obtained from Clara Jenkins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, 30305, (404) 842-6640 or FTS 236-6640.

Dated: April 17, 1990.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90-9427 Filed 4-23-90; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

Public Information Collection Requirements Submitted to Office of Management and Budget for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Department of Health and Human Services (HHS) previously published a list of information collection packages it submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (Pub. L. 96-511). The Health Care Financing Administration (HCFA), a component of HHS, now publishes its own notices as the information collection requirements are submitted to OMB. HCFA has submitted the following requirements to OMB since the last HCFA list was published.

1. *Type of Request:* Revised; *Title of Information Collection:* Home Health Agency Medicare and Medicaid Survey Report Forms for Revised Conditions of Participation; *Form Numbers:* HCFA-1515 and 1572 Revisions and Replacement; *Frequency:* Annually; *Respondents:* State/local governments; *Estimated Number of Responses:* 5,700; *Average Hours per Response: 1; Total Estimated Burden Hours:* 5,700.

2. *Type of Request:* Extension; *Title of Information Collection:* End Stage Renal Disease Facility Survey; *Form Number:* HCFA-2744; *Frequency:* Annually; *Respondents:* Businesses/other for profit; *Estimated Number of Responses:* 1,950; *Average Hours per Response:* 1.5; *Total Estimated Burden Hours:* 2,925.

Additional Information or Comments: Call the Reports Clearance Officer on 301-966-2088 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent directly to the following address: OMB Reports Management Branch, Attention: Allison Herron, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: April 18, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 90-9415 Filed 4-23-90; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Establishment of National Advisory Council for Human Genome Research

Pursuant to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) and section 222 of the Public Health Service Act, as amended (42 U.S. Code 217a), the Acting Director, National Institutes of Health, announces the establishment by the Secretary, Department of Health and Human Services, of the National Advisory Council for Human Genome Research.

The National Advisory Council for Human Genome Research will advise the Secretary; the Assistant Secretary for Health; the Director, National Institutes of Health; and the Director, National Center for Human Genome Research; on matters relating to the conduct and support of, and dissemination of information respecting human genome research, training, and other programs related to the human genome initiative.

The Advisory Council will review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge.

Dated: April 18, 1990.

William F. Raub,

Acting Director, National Institutes of Health.

[FR Doc. 90-9414 Filed 4-23-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 55 FR 10507, March 21, 1990) is amended to reflect organizational changes within the Division of Safety Research, National Institute for Occupational Safety and Health.

Section HC-B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the Division of Safety Research (HCCB) and substitute the following:

(1) As the focal point for the Institute's occupational traumatic injury prevention and safety program, identifies the major causes of injuries and safety hazards, identifies interventions to improve worker safety, and supports implementation of these interventions;

(2) Develops scientifically sound recommendations for programs to prevent and control occupational traumatic injuries;

(3) Develops scientifically sound recommendations for the performance and use of personal protective

equipment and various other devices for protecting workers;

(4) Conducts the national certification program for respirators and mine-sampling units to increase worker protection in hazardous environments;

(5) Evaluates the impact of targeted control programs for preventing or mitigating traumatic injury, diseases, disability, and death;

(6) Manages program planning/project coordination, including the Division's financial and personnel management systems, and ensures the scientific and program integrity of Division functions.

Effective Date: April 12, 1990.

William L. Roper,

Director, Centers for Disease Control.

[FR Doc. 90-9429 Filed 4-23-90; 8:45 am]

BILLING CODE 4160-18-M

Centers for Disease Control; Grant Authorities Under Title III of the Public Health Service Act; Delegation of Authority

Notice is hereby given that the Director, Centers for Disease Control, has affirmed and ratified any actions taken by the PHS Regional Health Administrators, Regions I–X, under sections 317 and 318 of the Public Health Service Act (42 U.S.C. 241 *et seq.*), as amended, for the period December 12, 1988, through November 20, 1989, in accordance with the November 21, 1984, delegation of authority from the Director, Centers for Disease Control.

In addition, the Director, Centers for Disease Control, has rescinded the November 25, 1980, delegation to PHS Regional Health Administrators of authority for project grants for health programs for refugees under section 412(c) of the Immigration and Nationality Act.

These actions became effective on April 6, 1990.

Dated: April 12, 1990.

Glenda S. Cowart,

Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 90-9430 Filed 4-23-90; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202–395–7340.

Title: Bond Guaranty, 25 CFR part 104 and Supplemental Surety Bond Guaranty, 25 GFR part 105.

OMB approval number: New program.

Abstract: The Bureau of Indian Affairs has authority to guarantee the payment of bonds issued by Indian tribes and to provide supplemental guaranties to surety bond guaranties provided by the Small Business Administration. The information collected will be used to determine eligibility of the applicants for such guaranties.

Bureau form numbers: 5–4752, 5–4753, 5–4755, and 5–4756.

Frequency: On occasion.

Description of respondents: Indian tribes issuing municipal type bonds guaranteed by the Bureau and Indian economic enterprises needing supplemental guaranties on SBA surety bond guaranties.

Estimated completion time: 80 hours for tribal bond guaranties and 2 hours for surety bond guaranties.

Annual responses: 18 for tribal bonds and 50 for surety bonds.

Annual burden hours: 1440 for tribal bonds and 100 for surety bonds.

Bureau clearance officer: Gail Sheridan, 202–343–1685.

Dated: March 26, 1990.

Reginald Arnold,

Chief, Division of Financial Assistance.

[FR Doc. 90-9443 Filed 4-23-90; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AK-(964)-4230-15; F-14944-A]

Alaska Native Claims Selection; Conveyance to Tozitna Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is herby given that the decision to issue conveyance (DIC) to Tozitna Limited, notice of which was published in the **Federal Register** 48 FR 37087 on August 16, 1983, is modified by adding "Lot 5" before "Sec. 14", in the description narrative for EIN 5a, C3, C5, D9, and, by a redescription of the lands approved for conveyance in secs. 12, 13, 14 and 24, T. 4 N., R. 22W., Fairbanks Meridian.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the modified DIC may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal govenment, or regional corporation, shall have until May 24, 1990 to file an appeal on the issues in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given August 16, 1983, is final.

Mary M. Bone,

Supervisor, Fairbanks Section, Branch of Doyon/Northwest Adjudication.

[FR Doc. 9431 Filed 4-23-90; 8:45 am]

BILLING CODE 4310-JA-M

[UT-022-00-4111-13]

Management Framework Plans, Utah

AGENCY: Bureau of Land Management (BLM), Utah, Interior.

ACTION: Notice of intent to amend the Randolph and Park City Management Framework Plans (MFP) for management of oil and gas resources.

SUMMARY: The Salt Lake District proposes to amend the Randolph and Park City MFPs to incorporate decisions on management of oil and gas resources in the eastern portion of the Bear River Resource Area. The area includes Rich, Cache, Morgan, Summit, and Weber Counties.

All public land and subsurface oil and gas estate in both planning areas (350,970 acres) would be categorized for oil and gas leasing in one of the following categories.

Category One—Open to leasing.

Category Two—Open to leasing with special stipulations.

Category Three—Open to leasing with no surface occupancy.

Category Four—Closed to leasing.

An environmental assessment (EA) will be prepared to determine the environmental consequences of the above proposed action and of continuing with present management and whether or not an environmental impact statement (EIS) is called for. The EA will be prepared to determine what lands should be placed in each category in order to minimize restrictions on oil and gas activities, while providing protection of other resources from significant environmental impacts. The EA will use a "reasonable development" scenario based on oil and gas potential and historical development activity to determine impacts, including cumulative impacts, that would be expected to result from alternative categorizations. The EA will be prepared by an interdisciplinary team comprised of the following expertise: archaeologist, surface protection specialist, geologist, wildlife biologist, range technician, and environmental specialist.

For 30 days from the date of publication of this notice, the BLM will accept comments on the proposal to do a plan amendment.

Existing planning documents and information are available at the Bear River Resource Area Office, 2370 South 2300 West, Salt Lake City, Utah 84119, phone: (801) 977–4300.

FOR FURTHER INFORMATION CONTACT: Leon Berggren, Bear River Resource Area Manager.

Dated: February 15, 1990.

James M. Parker,

State Director.

[FR Doc. 90–9434 Filed 4–23–90; 8:45 am]

BILLING CODE 4310–DQ–M

[AZ–040–00–4320–02]

Joint Meeting of the Safford District Grazing Advisory Board and Advisory Council; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Saffort District announces a forthcoming joint meeting of the Safford District Grazing Advisory Board and Advisory Council.

DATES: Friday, May 25, 1990; 8:30 a.m.

ADDRESSES: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Public Law 92–463 and 94–579 and 43 CFR part 1790. The agenda for the meeting will include:

1. Discussion of wildlife management in Wilderness areas and status of Aravaipa Bighorn Sheep Herd.
2. Range Management in Wilderness areas.
3. Progress report on Muleshoe and Aravaipa allotments.
4. Tour of Turkey Creek cliff dwelling site.
5. Grazing Advisory Board business meeting.

The meeting will be open to the public. Council and Board members will meet at the BLM Office, 425 E. 4th St., Safford, Arizona at 8:30 a.m. From there they will depart via BLM provided vehicles for the meeting location at the Turkey Creek cliff dwelling site, located approximately 2 miles south of the east Aravaipa parking lot. Members of the public may attend the meeting, but must provide their own transportation. It is expected the Council and Board members will return to Safford by 5 p.m.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during business hours) within thirty (30) days following the meeting.

Dated: April 16, 1990.

Ray A. Brady,

District Manager.

[FR Doc. 90–9425 Filed 4–23–90; 8:45 am]

BILLING CODE 4310–32–M

Off-Road Vehicle Designation; Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of off-road vehicle designation.

SUMMARY: Notice is hereby given that after a 30-day comment period and no adverse comments are received, the use of off-road vehicles is limited on public land within the Grove Creek Special Management Area in Carbon County, Montana. The designation is to be in effect during the bird and big game hunting seasons as established by the Montana Department of Fish, Wildlife and Parks (MDFW&P). The designation is in accordance with the authority and requirements of Executive Orders 11644 and 11989 and regulations of 43 CFR part 8340.

DATES: This designation will only be in effect during the big game and bird hunting seasons established by MDFW&P.

SUPPLEMENTARY INFORMATION: The Grove Creek Special Management Area consists of 25,000 acres, including approximately 7500 acres of public land. The area affected by the designation is administered in a cooperative effort involving Bureau of Land Management, Miles City District, Billings Resource Area; Waynard Anderson, lessee of Grove Creek Ranch; MDFW&P; and the Glacier Park Company. The purpose of the designation is to prevent further damage to soil and vegetative resources, open additional private lands to hunting, reduce user conflicts and provide a higher quality hunt to the public user.

Grove Creek Special Management Area is located six miles south of Belfry, Montana. Approximate boundaries are: the Custer National Forest boundary to the west; the Clark's Fork River to the east; Grove Creek to the north; and the Montana/Wyoming state line on the south. All of the area will be restricted to walk-in only, except for designated roads open to vehicular use. This designation is in accordance with the Final Billings RMP/EIS, thus no additional EIS or EAR is necessary.

ADDRESSES: For further information about this designation, contact either of the following offices:

BLM

Billings Resource Area, 810 E. Main, Billings, Montana 59105, Telephone: (406) 657–6262

MDFW&P

Region 5, 2300 Lake Elmo Road, Billings, Montana 59105, Telephone: (406) 252–4654.

Dated: April 16, 1990.

Mat Millenbach,

District Manager.

[FR Doc. 90–9424 Filed 4–23–90; 8:45 am]

BILLING CODE 4310–DN–M

[OR–943–00–4214–11; GPO–202; WASH–0844–B]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposed that a portion of the land withdrawal for recreation and roadside zone purposes continue for an additional 20 years and requests that the lands involved remain closed to mining.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503–231–6905.

The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 3870 dated

November 12, 1965, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The following identified lands and projects are involved:

Mt. Baker National Forest

South Fork Stillaguamish Highway Roadside Zone, 44 acres located in Sec. 23, T. 30 N., R. 9 E., and Secs. 21 and 22, T. 30 N., R. 10 E., W.M., in Snohomish County, approximately 1 mile from Silverton.

Mt. Pilchuck Recreation Area, 160 acres located in Sec. 20, T. 30 N., R. 8 E., W.M., in Snohomish County, approximately 2 miles south of Robe.

Wiley Creek Recreation Area, 117.50 acres located in Sec. 24, T. 30 N., R. 8 E., and Sec. 19, T. 30 N., R. 9 E., W.M., in Snohomish County, approximately 6 miles west of Silverton.

Sunnyside-Red Bridge Recreation Area, 160 acres located in Sec. 21, T. 30 N., R. 9 E., W.M., in Snohomish County, approximately 3 miles south of Silverton.

Coal Creek Recreation Area, 40 acres located in Sec. 16, T. 30 N., R. 10 E., W.M., in Snohomish County, approximately 2 miles east of Silverton.

Big Four Recreation Area, 191.75 acres located in Secs. 22 and 27, T. 30 N., R. 10 E., W.M., in Snohomish County, approximately 3 miles northwest of Silverton.

Bedel Recreation Area, 38.15 acres located in Sec. 9 R. 30 N., R. 11 E., W.M., in Snohomish County, approximately 8 miles east of Silverton.

Monte Cristo Lake Recreation Area, 80 acres located in Secs. 29 and 32, T. 30 N., R. 11 E., W.M., in Snohomish County, approximately 5 miles northwest of Monte Cristo.

Sloan Creek Recreation Area, 60 acres located in Sec. 29, T. 30 N., R. 12 E., W.M., in Snohomish County, approximately 12 miles east of Silverton.

Whitechuck Bridge Recreation Area, 66.70 acres located in Secs. 13 and 14, R. 31 N., R. 10 E., W.M., in Snohomish County, approximately 5 miles northeast of Monte Cristo.

Whitechuck Road Roadside Zone, 9 acres located in Secs. 21 and 28, T. 31 N., R. 12 E., W.M., in Snohomish County, approximately 14 miles northeast of Silverton.

French Creek Recreation Area, 30 acres located in Sec. 15, R. 32 N., R. 8 E., W.M., in Snohomish County, approximately 2 miles southwest of Fortson.

Buck Creek Recreation Area, 79.87 acres located in Sec. 13, T. 32 N., R. 11 E., W.M., in Snohomish County, approximately 12 miles east of Darrington.

Suiattle Guard Station Administrative Site, 40 acres located in Sec. 13, T. 32 N., R. 11 E., W.M., in Snohomish County, approximately 12 miles east of Darrington.

Downey Creek Recreation Area, 81.91 acres located in Sec. 14, R. 32 N., R. 12 E., W.M., in Snohomish County, approximately 18 miles east of Darrington.

Sulphur Creek Recreation Area, 129.10 acres located in Sec. 24, R. 32 N., R. 12 E., W.M., in Snohomish County, approximately 18 miles east of Darrington.

Marble Creek Recreation Area, 70.65 acres located in Sec. 8, T. 35 N., R. 12 E., W.M., in Skagit County, approximately 6 miles east of Marblemount.

Komo Kulshan Administrative Site, 120 acres located in Sec. 25, T. 37 N., R. 8 E., W.M., in Skagit County, approximately 9 miles north of Concrete.

Boulder Creek Recreation Area, 80.49 acres located in Sec. 7, R. 37 N., R. 9 E., W.M., in Whatcom County, approximately 13 miles north of Concrete.

Little Park Creek Recreation Area, 30 acres located in Sec. 5, T. 37 N., R. 9 E., W.M., in Whatcom County, approximately 14 miles north of Concrete.

Baker Hot Springs Recreation Area, 10 acres located in Sec. 20, T. 38 N., R. 9 E., W.M., in Whatcom County, approximately 16 miles southeast of Glacier.

Rainbow Falls Recreation Area, 20 acres located in Sec. 19, T. 38 N., R. 9 E., W.M., in Whatcom County, approximately 16 miles southeast of Glacier.

Bridge Recreation Area, 59.56 acres located in Sec. 2, T. 39 N., R.7 E., and Sec. 36, T. 40 N., R. 7 E., W.M., in Whatcom County, approximately 4 miles east of Glacier.

Shuksan-Silver Fir Administrative Site and Recreation Area, 66.35 acres located in Sec. 31, T. 40 N., R. 9 E., W.M., in Whatcom County, approximately 12 miles east of Glacier.

Twin Lakes Recreation Area, 110 acres located in Secs. 15 and 16, T. 40 N., R. 9 E., W.M., in Whatcom County, approximately 22 miles east of Maple Falls.

The withdrawal currently segregates the lands from operation of the mining laws, but not the public land laws generally and the mineral leasing laws. The Forest Service requests no change in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: April 13, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90-9442 Filed 4-23-90; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Outer Continental Shelf Advisory Board, Policy Committee; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. appendix 1, and the Office of Management and Budget's Circular No. A-63, Revised. The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet during the period 8 a.m. to 4:30 p.m., May 23 and 8 a.m. to 5 p.m. on May 24, 1990, at the Hotel Captain Cook, Anchorage, Alaska (907-276-6000).

The agenda for the meeting will cover the following principal subjects:

May 23

- Report of the Subcommittee to Review Analyses of the *Exxon Valdez* Oil Spill
- U.S. Hydrocarbon Production Trends Related to Global Supply and Demand
- National Academy of Sciences Reports
  - —Resource Evaluation
  - —Environmental Information
- Separation of Leasing/Exploration and Development/Production Stages of OCS Activities

May 24

- MMS Updates
- Coastal Zone Management Act Reauthorization
- OCS Scientific Committee Report
- Report on Operations in Alaska
- Public Education: Risks and Choices Related to Offshore Energy Resources
- Oil Spill Containment and Response Technology Research/Operations Initiatives
- 5-Year Leasing Program

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the Committee. Such requests should be made no later than May 11, 1990, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 1849 C Street NW., room 4230, Washington, DC 20240.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more

information, contact Carolita Kallaur at 202–343–3504. The number will be changed on April 30 to 202–208–3504.

Minutes of the meeting will be available for public inspection and copying at the Minerals Management Service, Department of the Interior, 1849 C Street NW., room 2070, Washington, DC 20240.

Dated: April 11, 1990.

Ed Cassidy,

Deputy Director,

Minerals Management Service.

[FR Doc. 90–9471 Filed 4–23–90; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Shelf Oil and Gas Information Program (OCSIP)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availablility.

SUMMARY: Notice is hereby given that the OCS Information Program has published the following two documents and four map plates:

(1) *Gulf of Mexico Update:* May 1988-July 1989 (OCS Information Report MMS 89–0079)

(2) *OCS National Compendium, Outer Continental Shelf Oil and Gas Information through September 1988* (OCS Information Report, MMS 89–0043)

(3) Alaska Map Series 89–0101 (consisting of 3 plates: Arctic, Bering, Chukchi)

(4) Pacific Map Series 89–0100 (consisting of 1 plate)

The purpose of the *Gulf of Mexico Update,* as well as the updates for the other three OCS regions, is to provide affected States, local governments, and other interested parties with current information on OCS oil and gas activities and related issues so that they may plan for any possible impacts.

The purpose of the *OCS National Compendium* is to provide an overview of previous updates that the OCS Information Program published during the past 2 years. Historical information is extracted from the regional update (Alaska, Atlantic, Gulf of Mexico, and Pacific) and consolidated into one document in the form of graphs and charts to allow a reader to make regional and OCS-wide comparisons of data.

The four large map plates detail regional offshore and coastal oil and gas activities for the Alaska and Pacific OCS Regions.

DATES: Availability effective April 24, 1990.

TO OBTAIN COPIES: Write or call the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Mail Stop 642, Herndon, VA 22070. Telephone (703) 787–1080. Copies are free upon request.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slitor, Chief, OCS Information Program, Minerals Management Service, 381 Elden Street, Mail Stop 642, Vienna, VA 22070. Telephone (703) 787–1080.

SUPPLEMENTARY INFORMATION: The OCSIP publishes its documents in compliance with a mandate in the OCS Lands Act Amendments of 1978 (43 U.S.C. 1352). According to the mandate, the documents are to provide affected States, local governments, and other interested parties with current information on OCS oil and gas activities and related issues to help them plan for any potential impacts.

The *Gulf of Mexico Update* discusses offshore oil and gas activites for the May 1988-July 1989 period in four chapters entitled:

(1) Offshore Oil and Gas Resources of the Gulf of Mexico OCS Region.

(2) Magnitude and Timing of Offshore Developments.

(3) Postproduction Transportation and Facilities.

(4) Issues Related to Development of OCS Resources.

During the May 1988-July 1989 period, the offshore oil and gas industry in the Gulf of Mexico OCS Region continued to rebound from the oil and natural gas price declines of the mid-1980's. The price of oil and the number of working offshore rigs stabilized toward the end of the decade. This update discusses what effect this may have had on the Gulf of Mexico OCS Region and provides information regarding recent trends in the region.

The *OCS National Compendium* is predominately charts and graphs complied from the data from the four chapters contained in each of the regional updates. This consolidated publication precludes requests for the entire series of summary reports, updates, and indexes that the OCS Information Program has published over the last 10 years. Also, consolidating the regional data into a graphical format makes it easier to comprehend the large accumulation of data.

Dated: April 17, 1990.

Ed Cassidy,

Deputy Director.

[FR Doc. 90–9449 Filed 4–23–90; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 14, 1990. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington DC 20013–7127. Written comments should be submitted by May 9, 1990.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

Fairfield County

Lattin, Nathan B., Farm, 22 Walker Hill Rd., Newtown vicinity, 90000760

Pike, Gustavus and Sarah T., House 164 Fairfield Ave., Stamford, 9000759

Litchfield County

Rumsey Hall, 12 Bolton Hill Rd., Cornwall, 90000762

Middlesex County

Bushnell, Benjamin, Farm, 52 Ingham Hill Rd., Essex, 90000761

DISTRICT OF COLUMBIA

District of Columbia (State equivalent)

Alden, Babcock, Calvert Apartments, 2620 13th Street, NW., Washington , 90000737

FLORIDA

Polk County

Lake Wales Commercial Historic District (Lake Wales MPS), Roughly bounded by Scenic Hwy., Central Ave., Market St., and Orange Ave., Lake Wales, 90000732

ILLINOIS

Champaign County

Alpha Delta Phi Fraternity House (Fraternity and Sorority Houses at the Urbana-Champaign Campus of the University of Illinois MPS), 310 E. John St., Champaign, 90000752

Delta Upsilon Fraternity House (Fraternity and Sorority Houses at the Urbana-Champaign Campus of the University of Illinois MPS), 312 E. Armory Ave., Champaign, 90000749

Kappa Delta Rho Fraternity House (Fraternity and Sorority Houses at the Urbana-Champaign Campus of the University of Illinois MPS), 1110 S. Second St., Champaign, 90000750

Phi Mu Sorority House (Fraternity and Sorority Houses at the Urbana-Champaign Campus of the University of Illinois MPS), 706 W. Ohio St., Urbana, 90000751

Cook County

Sherman Park (Chicago Park District MPS), Bounded by W. 52nd St., Racine Ave., Garfield Blvd., and Loomis St., Chicago, 90000745

KANSAS

Shawnee County

Thomas Arch Bridge (Masonry Arch Bridges of Kansas MPS), Jct. of Wanamaker Rd. and 165th St., across the Wakarusa R., Auburn vicinity, 90000746

LOUISIANA

St. Martin Parish

Ransonet House, 431 E. Bridge St., Breaux Bridge, 90000748

Vermilion Parish

Bank of Gueydan, 214 Main St., Gueydan, 90000747

MISSOURI

Macon County

Dent, Lester and Norma, House, 225 N. Church St., La Plata, 90000763

Phelps County

Phelps County Jail, Park St. between Second and Third Sts., Rolla, 90000766

NEW YORK

Tompkins County

Ithaca Gas and Electric Corporation Building, 123 S. Cayuga St., Ithaca, 90000734

Jamieson and McKinney Block, 115–121 S. Cayuga St., Ithaca, 90000733

NORTH CAROLINA

Catawba County

Anthony, Abraham, Farm (Catawba County MPS), W side of SR 1008, 0.5 mi. S of jct. with SR 2021, Blackburn vicinity, 90000738

Grace Union Church and Cemetery (Catawba County MPS), Jct. of SR 1008 and SR 2030, Blackburn vicinity, 90000739

Keever—Cansler Farm (Catawba County MPS), E side of SR 2024, 0.05 mi. N of jct. with SR 2026, Blackburn vicinity, 90000740

Miller—Cansler House (Catawba County MPS), N side of SR 2007, 0.5 mi. E of jct. with SR 1005, Maiden vicinity, 90000741

Neill—Turner—Lester House (Catawba County MPS), N side of SR 1836, 0.25 mi. NE of jct. with SR 1837, Sherrills Ford vicinity, 90000742

Shuford—Hoover House (Catawba County MPS), E side of SR 1008, 0.05 mi. S of jct. with SR 10, Blackburn vicinity, 90000743

Wesley's Chapel Arbor and Cemetery (Catawba County MPS), W side of SR 2033, 0.4 mi. S of jct. with SR 10, Blackburn vicinity, 90000744

OHIO

Cuyahoga County

Fairhill Road Village Historic District, 12309–12511 Fairhill Rd., Cleveland, 90000758

Irishtown Bend Archeological District, Address Restricted, Cleveland, 90000757

Muskingum County

Masonic Temple Building, 36–42 N. Fourth St., Zanesville, 90000756

Summit County

Tuscarawas Avenue—Alexander Square Commercial Historic District, Bounded by Park Ave., Tuscarawas Ave., 4th and 5th Sts., Barberton, 90000755

Wood County

Perrysburg Water Maintenance Building, 130 W. Indiana Ave., Perrysburg, 90000754

Schaller Memorial Building, 130 W. Indiana St., Perrysburg, 90000753

PUERTO RICO

San German Municipality

Jaime Acosta y Fores Residence, Calle Dr. Santiago Veve, 70, San German, 90000767

TEXAS

Wood County

Haines, George W., Site, Address Restricted, Hainesville vicinity, 90000764

Moody, Joseph and Martha, Farmstead, Address Restricted, Hainesville vicinity, 90000765

[FR Doc. 90–9417 Filed 4–23–90; 8:45 am]

BILLING CODE 4310–70–M

Office of Acquisition and Property Management

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Department's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Department's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1084–0017), Washington, DC 20503, telephone (202) 395–7340.

Title: "Brand Name or Equal" Provision—Department of the Interior.

OMB approval number: 1084–0017.

Abstract: The provision, agency implementation of the requirements stated in Federal Acquisition Regulation (FAR) § 10.004(b)(3), requires bidders to provide supplementary descriptive information regarding any "or equal" products offered in response to a "brand name or equal" solicitation specification. The information provided will be used to determine whether the offered product meets the Department's requirements.

Bureau form number: None.

Frequency: One time, with bid.

Description of respondents: Prospective contractors offering "or equal" products in response to "brand name or equal" solicitations.

Estimated completion time: 3 hours.

Annual responses: 100.

Annual burden hours: 300.

Department clearance officer: John Strylowski, 202–343–5345.

Dated: April 17, 1990.

Larry D. Cardwell,

Director, Office of Acquisition and Property Management.

[FR Doc. 90–9444 Filed 4–23–90; 8:45 am]

BILLING CODE 4310–RF–M

Information Collection Submitted to the Office of Management and Budget for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Department's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Department's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1084–0019), Washington, DC 20503, telephone (202) 395–7340.

Title: Indian Preference Program—Department of the Interior.

OMB approval number: 1084–0019.

Abstract: The provision/clause requires contractors who have been awarded contracts in excess of $50,000 under Public Law 93–638, to establish and conduct and Indian preference program. Part of the program requires the maintenance of records concerning contractor efforts to employ Indians and to use Indian subcontractors. A second requirement of the program is the semi-annual report by the contractor to the contracting officer which summarizes the contractor's preference program efforts and indicates (a) the number and (b) types of available positions filled and dollar amounts of all subcontracts awarded to Indian organizations, Indian-owned economic enterprises, and all other firms.

Bureau form number: None.

Frequency: Semi-annually.

Description of respondents: Contractors who have been awarded contracts in excess of $50,000 pursuant to Public law 93–638; contractors with

contract awards of less than $50,000 whose contracts present substantial opportunities for Indian employment, training or subcontracting.

Estimated completion time: 2 hours.

Annual responses: 2,500.

Annual burden hours: 5,000.

Department clearance officer: John Strylowski, 202–343–5345.

Dated: April 17, 1990.

Larry D. Cardwell,

Director, Office of Acquisition and Property Management.

[FR Doc. 90–9445 Filed 4–23–90; 8:45 am]

BILLING CODE 4310–RF–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–282]

Review of Mexico's Recent Trade and Investment Liberalization Measures Phase II: Prospects for Future United States-Mexican Trade Relations

AGENCY: United States International Trade Commission.

ACTION: Notice of additional public hearing to be held in New Mexico.

EFFECTIVE DATE: February 6, 1990.

FOR FURTHER INFORMATION CONTACT: Constance A. Hamilton (202–252–1263), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: Phase II of investigation no. 332–282 wil provide a summary of the views of recognized authorities (for example, government officials, scholars, private sector businessmen, and others) on possibilities for the future direction of the U.S.-Mexican bilateral relationship. Such possibilities might include a free trade area, an enhanced dispute settlement mechanism, sectoral approaches, and other options for enhanced bilateral relations.

PUBLIC HEARING: A public hearing in connection with phase II of this investigation will be held on May 5, 1990 beginning at 9:30 a.m., at the Holiday Inn Las Cruces, located at 201 East University Blvd., (corner of University and Main), Las Cruces, New Mexico 88001, (telephone 501–526–4411). All persons have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than noon, April 30, 1990. The deadline for filing prehearing briefs (original and 14 copies) is April 30, 1990. Post hearing briefs are due on May 22, 1990.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the matters to be addressed in the phase II report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection to interested persons by the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received no later than July 16, 1990. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

By order of the Commission.

Issued: April 20, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–9597 Filed 4–20–90; 1:26 pm]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 486]

Railroad Cost of Capital, 1989

AGENCY: Interstate Commerce Commission.

ACTION: New dates for filing of comments in cost of capital proceeding.

SUMMARY: In the Federal Register of December 19, 1989 (54 FR 51955), the due date for the submission of comments from non-railroad parties was established to be March 9, 1990. That date was postponed at the request of IMC Fertilizer, Inc. (IMCF) to March 23, 1990, and was later suspended pending resolution of discovery issues. Those issues have now been resolved, and IMCF and the Association of American Railroads (AAR), have requested new filing dates.

DATES: The due date for comments from non-railroad parties is extended to April 30, 1990. The due date for the filing of rebuttal comments by the railroads is also extended to May 21, 1990. These extensions will allow all parties sufficient time to provide comments in this proceeding.

ADDRESSES: Send an original and 15 copies of comments to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275–7489, (TDD for the hearing impaired: (202) 275–1721).

SUPPLEMENTARY INFORMATION: In *Railroad Cost of Capital—Expedited Procedure,* 3 I.C.C. 2d, 866, the Commission established that the annual cost of capital determination would be served not later than June 30 each year. This date was based on the railroads' rebuttal comments being received by March 25 of each year. Since the railroads' rebuttal comments are now due on May 21, 1990, there may be a delay in the issuance of the 1989 cost of capital determination to some date after June 30, 1990. The Commission will continue to make every effort to expedite the completion of this proceeding.

Dated: April 18, 1990.

By the Commission, Edward J. Philbin, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 90–9440 Filed 4–23–90; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 388 (Sub-No. 5)]

Intrastate Rail Rate Authority; GA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Georgia for a 5-year period. The Commission also notes that the State of Georgia will not jeopardize its recertification should it elect to discontinue requiring carriers to file tariffs with the Georgia Public Service Commission.

DATES: The 5-year recertification will be effective May 24, 1990, and will expire May 23, 1995.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. (*TDD for hearing impaired:* (202) 275–1721.))

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202)

289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: April 17, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–9439 Filed 4–23–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31651]

Burlington Northern Railroad Co.; Trackage Rights Exemption; CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Burlington Northern Railroad Company (BN) over 43.1 miles of CSXT line between milepost L621.7 at Atmore, Escambia County, AL, and milepost L635.4 at Cantonment, Escambia County, FL. To access the trackage rights, BN will operate over a 1,034-foot connector track to be constructed by BN and CSXT at Atmore, linking BN's main line with CSXT's main line.[1] The trackage rights will be effective on the date BN begins operations over the involved CSXT line and the new connector track.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Ethel A. Allen, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: April 17, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–9639 Filed 4–23–90; 8:45 am]

BILLING CODE 7035–01–M

[1] The construction and operation of the connector track is the subject of a petition for exemption filed April 4, 1990, in Finance Docket No. 31651 (Sub-No. 1), *Burlington Northern Railroad Company—Construction and Operation Exemption—Connector Track at Atmore, AL.*

[Finance Docket No. 31650]

Burlington Northern Railroad Co., Trackage Rights Exemption

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Burlington Northern Railroad Company (BN) over 43.7 miles of CSXT line between milepost L621.9 at Atmore, Escambia County, and milepost L665.6 at Mobile, Mobile County, AL. To access the trackage rights, BN will operate over a 1,062-foot connector track to be constructed by BN and CSXT at Atmore, linking BN's main line with CSXT's main line.[1] The trackage rights will be effective on the date BN beings operations over the involved CSXT line and the new connector track.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Ethel A. Allen, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: April 17, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–9438 Filed 4–23–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31625]

J.K. Line, Inc.; Acquisition and Operation Exemption

J.K. Line, Inc. (JKL), a noncarrier, has filed a notice of exemption to acquire and operate approximately 16 miles of rail line owned by the Tippecanoe Railroad Company between milepost 183, at Monterey, Pulaski County, IN, and milepost 199, at North Judson, Stark County, IN. The transaction is expected to be consummated on April 6, 1990.

Any comments must be filed with the Commission and served on: David A. Haist, Barnes & Thornburg, 600 One Summit Square, Fort Wayne, IN 46802, and Gordon C. Taiclet, Tippecanoe Railroad Company, Post Office Box 68, 10 Railroad Street, Monterey, IN 46960.

JKL shall retain its interest in and take no steps to alter the historic integrity of all sites and structures on the line that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 407.[1]

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 11, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–9307 Filed 4–23–90; 8:45 am]

BILLING CODE 7035–01–M

[1] The construction and operation of the connector track is the subject of a petition for exemption filed April 10, 1990, in Finance Docket No. 31650 (Sub-No. 1) Burlington Northern Railroad Company—Construction and Operation Exemption—Connector Track at Atmore, AL.

[Docket No. AB–101 (Sub-No. 8X)]

Duluth, Missabe and Iron Range Railway Co.; Abandonment Exemption in St. Louis County, MN

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 0.8-mile line of railroad between mileposts 5.4 and 6.2, at or near Virginia, St. Louis County, MN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co—*

[1] JKL certifies that it has identified to the appropriate State Historic Preservation Officer all sites and structures 50 years old and older that will be transferred as a result of this transaction.

Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 24, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 4, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by May 14, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kimberly J. Gallagher, P.O. Box 68, 135 Jamison Lane, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 27, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Decided: April 16, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–9305 Filed 4–23–90; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–101 (Sub–No. 7X)]

Duluth, Missabe and Iron Range Railway Co.; Abandonment Exemption In St. Louis County, MN

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 6-mile line of railroad between milepost 18, at McKinley, and milepost 23.9, at Gilbert, St. Louis County, MN.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 24, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by May 4, 1990.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by May 14, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Kimberly J. Gallagher, P.O. Box 68, 135 Jamison Lane, Monroeville, PA 15146.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by April 27, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Decided: April 16, 1990.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90–9305 Filed 4–23–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments

on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration
Training of Mine Rescue Teams
1219-0077
Monthly
Businesses or other for profit; small businesses or organizations
800 respondents; 15 minutes per response; 1,800 total hours
Requires records to be kept on file at the mine rescue station of the mandatory training received by each mine rescue team member
Records are used to ensure that all rescue team members have received the prescribed training within the specified time limit.

Notification of Commencement of Operations and Closing of Mines
1219-0092
On occasion
Businesses or other for profit; small businesses or organizations
Telephone responses: 1,747 responses; 3 minutes per response
Written responses: 350 responses; 30 minutes per response
Total burden: 262 hours
Requires operators of metal and nonmetal mines to notify MSHA of openings and closings of mines.

Maintenance of Independent Contractor Register
1219-0040
On occasion
Businesses or other for profit; small businesses or organizations
16,322 respondents; 8 minutes per response; 14,142 total hours
Requires mine operators to maintain a register of independent contractors working at the mine. The information is used by MSHA during inspections to determine proper responsibility for compliance with safety and health standards.

Employment Standards Administration
Notice of Controversion of Right to Compensation
1215-0023; LS-207
On occasion
Businesses or other for profit
900 respondents; 4,275 total hours; .25 hr. per response; 1 form
Form is used by insurance carriers and self insured employers to contorvert claims under the Longshore Act and extensions.

Employment and Training Administration
Request for Readmission
1205-0031; ETA 660
On occasion
State or local governments; businesses or other for-profit
5,150 respondents; 1,287 burden hours; 15 minutes per form; 1 form
This form provides information on Job Corps readmissions. It is used only when screeners can document that the applicant has the motivation and potential to complete the program if readmitted. It identifies the reasons for previous termination and the terminating center.

Signed at Washington, DC, this 19th day of April, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90-9479 Filed 4-23-90; 8:45 am]

BILLING CODE 4510-43-M

Employment and Training Administration

[TA-W-23,848]

Lincoln Lace and Braid Co., Providence, RI; Negative Determination Regarding Application for Reconsideration

By an application dated April 9, 1990 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 16, 1990 and published in the **Federal Register** on April 6, 1990 (55 FR 12691).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Lincoln Lace and Braid produced mainly shoelaces. The firm closed in December 1989.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The Department's survey revealed that most respondents did not import shoelaces in the period under investigation. Those respondents that did, decreased their imports in 1989 compared to 1988.

The company claims that it has lost sales because domestic shoe manufacturing customers for whom Lincoln Lace and Braid supplied shoelaces have been replaced by offshore shoe manufacturers. The company further states that the Department's investigation only centered on the last two or three years and did not focus on the damage to domestic shoe production in the early 1980s.

Under the Trade Act of 1974, only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered. Shoelaces are not like or directly competitive with shoes. This issue was addressed in *United Shoe Workers of America, AFL–CIO* v. *Bedell* 506 F2d 174 (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, shoelaces incorporated into the finished article (shoes) cannot be considered like or directly competitive with shoes.

Further, section 223(b)(1) of the Trade Act does not allow for the certification of workers laid off more than one year prior to the date of the petition. The date of the petition for workers at Lincoln Lace and Braid is December 13, 1989. Therefore, investigating sales, production, employment and import data in the early 1980's would serve no purpose since these data would not have "contributed importantly" to worker separations and a decline in sales or production at Lincoln Lace and Braid during the period relevant to the petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of April 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90–9480 Filed 4–23–90; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–23,850]

Maas & Waldstein Co., Newark NJ; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated March 26, 1990, Local #8–291 of the Oil Chemical & Atomic Workers Union (OCAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 16, 1990 and published in the **Federal Register** on April 6, 1990 (55 FR 12961).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that on March 5, 1990 an affiliate which was a major customer of bulk nail polish was sold to a foreign government corporation and that thirty workers will be laid off in September, 1990.

Investigation findings show that the data collection portion of the Department's factfinding investigation was completed on February 5, 1990. The Department's negative determination was based on the information obtained during the investigatory period. Accordingly, a new petition for workers producing bulk nail polish would be entertained after the termination of the six month toll manufacturing agreement between the subject firm and the foreign corporation in September, 1990.

The Department's denial was based on the fact that the increased import criterion of the Group Eligibility Requirements of the Trade Act was not met for workers producing industrial paints and coatings. The ratio of U.S. imports to domestic shipments of industrial paints and coatings was less than one percent in the period 1986 through 1988 and such imports declined in the first six months of 1989 compared to the same period in 1988.

Other findings show that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met for workers producing bulk nail polish. The Department's survey of the subject firm's major customers show that none imported bulk nail polish during the period applicable to the petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of April 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90–9481 Filed 4–23–90; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–23, 763]

Norbalt Rubber Corp., North Baltimore, OH; Negative Determination Regarding Application for Reconsideration

By an application dated March 21, 1990 the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on March 14, 1990 and published in the **Federal Register** on April 6, 1990 (55 FR 12961).

Pursuant to 29 FR 90.18(c) reconsideration may be granted under the following circumstances;

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not peviously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The company claims that the increased import criterion of the Group Eligibility Requirements is met because imports of foreign automobiles equipped with rubber hoses and tubes have caused a decline in sales and production of rubber hoses and tubes at Norbalt Rubber.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. This test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey of major customers of Norbalt Rubber revealed that the respondents did not purchase foreign-made rubber hoses and tubes in 1988 and 1989.

Further, under the Trade Act of 1974, only increased imports of articles like or directly competitive with the articles produced by the workers' firm or appropriate subdivision can be considered. Automobiles are not like or directly competitive with rubber hoses and tubes. This issue was addressed in *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F2d 174, (D.C. Cir. 1974). The court held that imported finished women's shoes were not like or

directly competitive with shoe components—shoe counters. Similarly, rubber hoses and tubes incorporated in the finished article (automobiles) cannot be considered like or directly competitive with automobiles.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of April 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-9482 Filed 4-23-90; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-28]

NASA Wage Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Wage Committee.

DATE AND TIME: June 20, 1990, 1:30 p.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 5026, Federal Building 6, 400 Maryland Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John N. Remissong, Code NPM, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2593).

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the NASA Assistant Associate Administrator for Personnel Management, on all matters involved in the development and authorization of a Wage Schedule for the Cleveland, Ohio, wage area, pursuant to Public Law 92-392.

TYPE OF MEETING: Closed.

PURPOSE OF MEETING: The Committee will consider wage survey data, local reports, recommendations, and statistical analyses and proposed wage schedule review therefrom.

Dated: April 17, 1990.

John Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-9450 Filed 4-23-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Hearing; Amended Agenda.

In a document published on Monday, April 9, 1990, 55 FR 13200, the Commission published a notice of hearing. This document amends the agenda.

DATE AND TIME: May 7, 1990, 9 a.m.—5 p.m.; May 8, 1990, 9 a.m.—5 p.m.

PLACE: Panamerican Health Organization (PAHO), Meeting room B, 525 23rd Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Byrnes, Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006, 202/254-5125.

AGENDA: The Commission will be meeting to review current research activities, particularly clinical trials, and to conduct Commission business.

Maureen Byrnes,

Executive Director.

[FR Doc. 90-9368 Filed 4-23-90; 8:45 am]

BILLING CODE 6820-CN-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-171]

Environmental Assessment and Finding of No Significant Impact Regarding the Renewal of Possession-Only License No. DPR-12, Philadelphia Electric Co., Peach Bottom Atomic Power Station, Unit No. 1

The Nuclear Regulatory Commission (the Commission) is considering issuance of the renewal of Possession-Only License No. DPR-12 for Philadelphia Electric Company's Peach Bottom Atomic Power Station, Unit No. 1.

Environmental Assessment

Identification of Proposed Action: Peach Bottom 1 is a 200MW (thermal) high temperature, gas cooled reactor that operated from June 1967 to its final shutdown on October 31, 1974. Peach Bottom Unit 1 is located in Peach Bottom Township, York County, Pennsylvania. The reactor site includes Peach Bottom Units 2 and 3 which are operating, boiling water reactors. Philadelphia Electric Company (the licensee) has proposed a renewal of Possession-Only License No. DPR-12 to December 24, 2015. Associated Technical Specifications (TS) changes are also proposed.

All spent fuel has been removed from the site and the fuel pool drained and decontaminated. All radioactive liquids have been removed and accessible areas of the facility decontaminated.

Need for Proposed Action: The granting of the proposed amendment would allow the licensee to retain Peach Bottom Unit 1 in a SAFSTOR status until December 24, 2015. This would assure that final decontamination and dismantling of Peach Bottom Unit 1 would not interfere with the presently licensed operation of Peach Bottom Units 2 and 3. The proposed delay would also significantly reduce the gamma exposure rate to workers involved in final decontamination and dismantling.

Environmental Impact of the Proposed Action: We have evaluated the proposed renewal of the Peach Bottom Unit 1 Possession-Only License and the licensee's Environmental Report with respect to 10 CFR 51.45b. Environmental considerations are discussed in the following sections.

Unavoidable Impacts: During the SAFSTOR period, Peach Bottom Unit 1 will continue to occupy a small (less than 1.0 acre) restricted area within the Peach Bottom Units 2 and 3 site boundary and that area will not be available for unrestricted access.

Alternatives Comparison: The three alternatives for decommissioning are SAFSTOR, ENTOMB and DECON. Each alternative as it relates to Peach Bottom 1 is discussed below:

1. SAFSTOR

SAFSTOR is the alternative in which the facility is placed and maintained in a condition that allows it to be safely stored and subsequently decontaminated to levels that permit release of the facility for unrestricted use. Peach Bottom 1 is in the SAFSTOR status now and no changes other than routine maintenance are anticipated for the period of time requested by the licensee.

During the remaining period of SAFSTOR the amount of Cobalt-60 present at Peach Bottom 1 (primarily in reactor internals) will decrease from 71,000 curies as of January 1, 1987 to

about 1700 curies as of December 24, 2015. This decrease in Cobalt-60 will significantly reduce exposure to workers that do the decontamination work as the potential exposures at Peach Bottom 1 would primarily come from the Cobalt-60.

2. ENTOMB

ENTOMB is the alternative in which radioactive contaminants are encased in a structurally long-lived material such as concrete. The entombed structure is maintained and surveillance continued until the radioactivity decays to a level that permits unrestricted release. Long-lived radionuclides present at Peach Bottom 1 such as Nickel-63 and Niobium-94 in the reactor vessel and vessel internals would not decay to levels acceptable for release to unrestricted access in any reasonable (100 year) period of time. Therefore, ENTOMB is not a viable alternative at Peach Bottom 1.

3. DECON

DECON is the alternative in which the equipment, structures and portions of the facility containing radioactive contaminants are removed or decontaminated to a level that permits the property to be released for unrestricted use shortly after final shutdown of the reactor.

This alternative could be selected now but would result in exposure rates for workers that are considerably greater than those that will exist at the end of the proposed extension of the license. Also, since there are other plants on the same site, an immediate DECON of Peach Bottom 1 could adversely impact their operation.

Local Short-Term Uses Versus Long-Term Productivity: The site is now being used for power production with the continued operation of adjacent nuclear power plants. The licensee has stated that there are no plans for this site other than electrical power production for the SAFSTOR period and there is no advantage gained by making this small area of land available earlier. Therefore, there is no conflict between short-term uses versus long-term productivity of the site.

Irreversible and Irretrievable Commitments of Resources: The proposed SAFSTOR period followed by dismantling would not involve the commitment of any significant amount of resources. Conversely, there would be less volume of radioactive waste to dispose of at the end of the SAFSTOR period than with immediate DECON because of radioactive decay. With less volume of radioactive waste, the required burial space at a low-level waste burial site would be reduced.

Access Control to Radiation Areas: All buildings and structures at Peach Bottom 1 that retain residual radioactivity above levels acceptable for release to unrestricted access (Regulatory Guide 1.86, Table I) are within a protected area. Access to this protected area is controlled by use of security guards, security fences, locked doors, and radiological procedures. In addition, access to the residual high level radiation in the reactor vessel is prevented by the shielded and sealed primary system.

The Peach Bottom 1 protected area is within a larger Peach Bottom Units 2 and 3 controlled area. Access to this larger controlled area is maintained through the use of security guards and a security fence.

Environmental Impacts—Public: More than 99 percent of the residual radioactivity (200,000 curies) is in the form of activated metal in the reactor vessel and its internal components. Since these radioactive components are metal and are contained within a sealed, dry, primary system, there is very little likelihood of this radioactivity being released to the environment during the SAFSTOR period.

All radioactive liquids and gases have been removed from the site. This eliminates potential sources of radioactivity that could move into the environment. The license inspections have confirmed the absence of byproduct material migration to the environment.

Potential Exposure to Workers: Requirements for access to protected areas are specified in the TS. Workers doing inspections, maintenance, or monitoring are exposed to radiation dose rates of no more than 0.2 millirem/hour. All highly activated reactor components are sealed within the shielded reactor vessel. Therefore, there will be little potential for significant worker exposure during the extended SAFSTOR period.

The requested extension of the SAFSTOR status will reduce dose rates from activated components by a significant amount for the decontamination/dismantling phase.

Alternative to the Proposed Action: The alternative to issuance of the license extension would be to deny the application and require immediate dismantlement of Peach Bottom 1. Immediate dismantlement would result in a greater radiation exposure to workers, greater radioactive waste volume, and a higher potential for release of radioactivity to the public during handing and transportation of the radioactive material because of the higher levels of radiation present. It might also adversely impact on Peach Bottom Units 2 and 3.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Commission's July 14, 1975 Environmental Assessment of the Peach Bottom 1 decommissioning plan.

Agencies and Person Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon foregoing environmental assessment, the Commission has concluded that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for this proposed action.

For further details with respect to this action, see the licensee's request for a license amendment dated November 24, 1975, as supplemented by letters dated March 4, 1987, December 16, 1988, July 12, 1989 and August 23, 1989. These documents are available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 17th day of April 1990.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactor, Decommissioning and Environmental Project Directorate, Division of Reactor Projects–III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 90–9472 Filed 4–23–90; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Joint Subcommittees on Reliability Assurance and Materials and Metallurgy; Meeting

The Subcommittees on Reliability Assurance and Materials and Metallurgy will hold a joint meeting on May 8, 1990, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, May 8, 1990—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss the status of the Nuclear Plant Aging Research (NPAR) Program and the aging issues associated with reactor coolant pressure boundary components and structures, and the industry efforts for dealing with the aging-related issues with regard to license renewal.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittees, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio G. Igne, (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 17, 1990.

Gary R. Quittschreiber,
Chief, Nuclear Reactors Branch.

[FR Doc. 90–9473 Filed 4–23–90; 8:45 am]
BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Improved Light Water Reactors; Meeting

The Subcommittee on Improved Light Water Reactors will hold a meeting on May 9, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 9, 1990—8:30 a.m. until the conclusion of business

The Subcommittee will review the "passive plant" designs of Westinghouse, Combustion Engineering, General Electric and the EPRI's future passive plant requirements document.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of Westinghouse, Combustion Engineering, General Electric and EPRI.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 18, 1990.

Gary R. Quittschreiber,
Chief, Nuclear Reactors Branch.

[FR Doc. 90–9474 Filed 4–23–90; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–313 and 50–368; License Nos. DPR–51 and NPF–6, EA 88–192]

Arkansas Power & Light Co., Arkansas Nuclear One Units 1 and 2; Order Imposing Civil Monetary Penalty

I

Arkansas Power & Light Company, Little Rock, Arkansas, is the holder of Operating License Nos. DPR–51 and NPF–6 issued by the Nuclear Regulatory Commission (NRC/Commission) on May 24, 1974 and September 1, 1978. The licenses authorize the licensee to operate Arkansas Nuclear One, Units 1 and 2, in accordance with the conditions specified therein.

II

A special inspection of the licensee's activities was conducted on July 14–18, 1986. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the licensee by letter dated April 24, 1989. The Notice stated the nature of the violation, the provision of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violation. The licensee responded to the Notice by letter dated June 22, 1989. In its response, AP&L admits that, applying present day perspective, certain documentation deficiencies existed in regard to the environmental qualification of the equipment that was the subject of the Notice. However, AP&L denies that the cited deficiencies constitute violations of 10 CFR 50.49. AP&L states that, even if it is assumed that the specified deficiencies constitute violations of 10 CFR 50.49, escalated enforcement action under the NRC's "Modified Enforcement Policy Relating to 10 CFR 50.49" (Modified Enforcement Policy) is inappropriate. The licensee also provided, in a letter dated August 11, 1989, additional information concerning the number of systems and components affected by the deficiencies.

III

After consideration of the licensee's responses and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support has determined, as set forth in the appendix to this Order, that the violations occurred as stated, that the violations were appropriately classified as a Category B problem under the

Modified Enforcement Policy, and that the civil penalty imposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be Fifty Thousand Dollars ($50,000). The civil penalty originally proposed was $75,000. However, the NRC reconsidered and is withdrawing the escalation of the proposed civil penalty for failure to take corrective action. Fifth Thousand Dollars is the minimum civil penalty for a Category B problem under the Modified Enforcement Policy and therefore that amount is being imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The licensee pay a civil penalty in the amount of $50,000 within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and should be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555, with copies to the Assistant General Counsel for Hearings and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, and the NRC Resident Inspector at Arkansas Nuclear One.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Rockville, Maryland this 17th day of April 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Appendix—Evaluations and Conclusions

On April 24, 1989, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) to Arkansas Power & Light Company (AP&L) for deficiencies relating to the environmental qualification (EQ) of electrical equipment important to safety. On May 19, 1989, AP&L requested, and was granted, a 30 day extension to respond to the Notice. By letter dated June 22, 1989, AP&L responded to the Notice (Response). On August 11, 1989, the licensee provided additional information requested by the NRC staff after receipt of the June 22, 1989, submittal. The NRC staff's evaluations and conclusions regarding AP&L's response follow.

Restatement of the Violation

10 CFR 50.49(f) requires that electric equipment important to safety be qualified by certain specified methods of testing identical or similar equipment under identical or similar postulated accident conditions with analysis to show that the equipment to be qualified is acceptable.

10 CFR 50.49(k) provides that licensees are not required to requalify electric equipment important to safety in accordance with 10 CFR 50.49 if the Commission has previously required qualification of the equipment in accordance with "Guidelines of Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors," November 1979 (DOR Guidelines). Such qualification was previously required by Commission Memorandum and Order CLI–80–21 on May 23, 1980.

Paragraph 5.2.2 of the DOR Guidelines states that a type test should only be considered valid for equipment identical in design and material construction to the test specimen unless deviations are evaluated as part of the qualification documentation.

Paragraph 5.2.6 of the DOR Guidelines states that equipment interfaces should be representative of the actual installation for the test to be considered conclusive, and as-built inspection in the field to verify that the equipment was installed as tested should be performed.

Contrary to the above, as of the date of the inspection, EQ files did not adequately document qualification of the numerous Limitorque motor operators (MOs) referenced in NRC Inspection Reports 50–313/86–23 and 50–368/86–24 because (1) the plant equipment was not identical in design and material construction to the qualification test specimen and deviations were not adequately evaluated as part of the qualification documentation, and (2) the licensee failed to verify that the equipment was installed as tested. As a result, for the Limitorque MOs identified, one or more of the following discrepancies was identified: (1) Unqualified Scotch 22/23 tape slices to motor winding leads, a subcompact to the MO, had not been identified; (2) unqualified terminal boards, a subcomponent to the MO, had not been identified; and (3) motor T-drains had not been installed as required.

Summary of Licensee's Response

AP&L admits that, applying present day perspective, certain documentation deficiencies existed in regard to the environmental qualification of the equipment that was the subject of the Notice. However, AP&L denies that the cited deficiencies constitute violations of 10 CFR 50.49. AP&L states that even if it is assumed that the specified deficiencies constitute violations of 10 CFR 50.49, escalated enforcement action under the NRC's "Modified Enforcement Policy Relating to 10 CFR 50.49" (Modified Enforcement Policy) is inappropriate.

AP&L supports its position with the following arguments:

1. Contrary to its normal Enforcement Policy, the NRC failed to adequately consider the actual safety significance of the alleged violations. AP&L stated that it is inappropriate to equate documentation deficiencies with actual equipment qualification deficiencies. Based on the lack of actual safety significance, AP&L contends, it would be more appropriate for NRC to have considered these deficiencies as violations not sufficiently significant to warrant consideration of a civil penalty. Further, the licensee argues that it is inappropriate for the NRC staff to take a civil penalty action solely based on a licensee's misreading of the NRC staff's intent with respect to equipment walkdowns.

2. AP&L contends that the NRC improperly classified the deficiencies as a Category B violation. AP&L contends that these deficiencies are more appropriately classified as Severity Level IV or V violations under the NRC's normal Enforcement Policy. Alternately, AP&L contends, these deficiencies should be considered as no more than a Category C violation under the Modified Enforcement Policy.

3. In regard to the specific deficiencies in the Notice involving tape splices and terminal blocks, AP&L contends that the "clearly should have known" threshold has not been reached. AP&L asserts that the NRC had given tacit approval to industry practices prior to the November 30, 1985 deadline with respect to inspection of the internals of Limitorque motor operators.

4. In regard to the specific deficiency in the Notice involving T-drains, AP&L denies that this constitutes a violation of 10 CFR 50.49. AP&L states that it analyzed this condition (motor operators without T-drains) and concluded in 1984, prior to the deadline for qualifying equipment, that T-drain installation was not necessary to satisfy 10 CFR 50.49 with respect to the valve motor operators in question. If the NRC concludes that the absence of T-drains was a violation of 10 CFR 50.49, AP&L argues that the

"clearly should have known" threshold was not reached.

5. AP&L argues that, even if violations are assumed to have occurred, full mitigation of the proposed civil penalty is warranted based on a fair applicatin of the factors specified in the NRC's Modified Enforcement Policy. AP&L contends that the NRC failed, in its proposed civil penalty, to give adequate consideration to AP&L's efforts to comply with 10 CFR 50.49 prior to the November 30, 1985 deadline, and failed to give adequate consideration to AP&L's corrective actions. In addition, AP&L argues that the three cited deficiencies represent isolated violations affecting a limited number of components. Accordingly, AP&L argues, NRC should mitigate the proposed penalty in its entirety in conformance with its Modified Enforcement Policy.

6. Finally, AP&L argues that NRC's proposed action is inconsistent with NRC's handling of similar issues at other licensed facilities.

NRC Evaluation of Licensee's Response

The NRC staff's evaluation of the licensee's arguments follows. The licensee's arguments are addressed in the same order as discussed above.

1. Safety Significance

The licensee states that the NRC has an obligation to categorize violations by severity levels based on safety significance and that this obligation was recognized by the Commission in promulgating the General Enforcement Policy (10 CFR part 2, appendix C). AP&L believes that this premise also applies equally to the Modified Enforcement Policy of GL 88–07. The licensee states that it is inappropriate to simply equate documentation deficiencies with actual qualification deficiencies and to apply a severity test limited to the "number of systems" affected. The licensee continues by contending that safety significance must be considered under GL 88–07. After considering GL 88–07, AP&L argues that these deficiencies should be treated as file discrepancies only.

The Commission, in promulgating 10 CFR 50.49, determined that a licensee's failure to demonstrate the environmental qualification of electrical equipment important to safety was a significant safety matter. A licensee's failure to qualify such equipment showed the licensee's lack of knowledge concerning the qualification of the equipment and, accordingly, showed that the licensee could not demonstrate the correctness of its bases for assessing plant safety. In the area of environmental qualification, a licensee's lack of knowledge of whether equipment important to safety is capable of operating in a harsh environment indicates that the licensee cannot predict whether such equipment would operate in the event of an accident in which it is called upon to perform its intended safety function. Accordingly, a licensee who lacks such knowledge cannot assure protection of the public health and safety in the event of an accident.

The environmental qualification regulations require licensees to qualify each item of electrical equipment important to safety. The regulations require each licensee to list each item of electrical equipment important to safety on a master list. All such listed items, by definition, perform important safety functions. Thus, safety significance is inherent with respect to each item on the list. As described above, the licensee's knowledge of whether such equipment is qualified is significant for protecting public health and safety. Accordingly, the Commission, as a matter of policy, decided to treat each unqualified item as equally significant to safety. As explained in the Modified Enforcement Policy, the Commission has aggregated individual violations of 10 CFR 50.49 to determine the pervasiveness of the qualification problem represented by those individual violations in order to assess civil penalties. The Commission developed Categories A, B, and C based on the pervasiveness of the violations which reflect the relative significance of the collective violations. Isolated individual violations are based upon the fact that a licensee could not assure the operation during an accident of a limited number of systems affected by the isolated individual violations. Because a small number of safety systems or components could fail during an accident as a result, the Commission classified such violations as Category C. If the violations affect a moderate number of systems, the violations would be more significant than those in Category C because the licensee would not know whether a correspondingly greater number of systems would operate in the event of an accident. Accordingly, the probability that an accident could endanger public health and safety would be increased. The Commission classifed such violations in Category B. Finally, pervasive problems would be the most significant because the licensee's lack of knowledge of equipment quality would extend to many systems and result in the licensee being unable to assure that these systems would perform their intended functions in an accident. These would be classified as Category A violations. This method, therefore, does provide a measure of the safety significance of environmental qualification violations.

The licensee states that the Notice cited only documentation discrepancies for unqualified Scotch 22/23 tape splices to motor winding leads, unqualified terminal blocks, and T-drains missing from the motor housing on Limitorque motor operated valves (MOVs) (items identified by AP&L during its Limitorque upgrade program). It should be noted that the licensee claims that each of these examples are only subcomponents of the qualified MOVs. The Notice addresses not only the documentation deficiencies, but also the fact that the MOVs were installed in a configuration not qualified by a test report. This is a hardware problem, not just a documentation problem.

The Modified Enforcement Policy does provide for categorizing certain violations at Severity Level IV or V. The intent of this provision was to prevent calling EQ violations significant if information which demonstrated the equipment to be qualified was readily available or accessible. Minor file deficiencies, which are resolved by adding references or the insertion of pertinent documents in the file, or deficiencies involving equipment known by the NRC staff to be qualified, are intended to be Severity Level IV or V violations, regardless of who found them. On the other hand, violations involving greater effort to prove qualification, such as significant analysis, testing, or extended efforts to produce or find the necessary information, may be considered significant violations and therefore considered for a possible civil penalty. The NRC staff considered this when evaluating the significance of the proposed violations. In summary, the NRC staff views the EQ deficiencies at ANO to be significant. In making that determination, it is irrelevant that the licensee may have misread the NRC staff's intent with respect to the single issue of walkdown as asserted by AP&L.

2. Categorization of the Violations

The licensee's general argument concerning classification of the violations based on safety significance is discussed above. Additional discussion of the merits of elements of the violations is provided in Paragraphs 3 and 4. The revised number of items and systems involved, as indicated in the licensee's August 11, 1989 letter, does not alter the NRC staff's conclusion that the categorization of the violations should be Category B. The violations, by the licensee's own tabulation, affected six systems and approximately three dozen components, which represent more than an isolated problem. Review of other actions taken by the NRC staff under the Modified Enforcement Policy finds the categorization of this action is consistent with that of other actions involving similar issues and similar numbers of systems and components.

3. Tape Splices and Terminal Blocks

A. *Tape Splices.* The NRC staff's Notice incorrectly cited the licensee for the use of Scotch 22/23 tapes in electrical splices instead of the types of tape actually employed which were Scotch 22/33. Based on its response, the licensee apparently recognized this as an inadvertent error which did not change the Notice in a substantive manner. However, in order to correct that error, it should be recognized that, where Scotch 23 tape is specifically identified, Scotch 33 tape is the material of concern. Furthermore, general references to tape used in electrical splices found in the Notice, its cover letter and this Appendix, are intended to describe Scotch 22/33 types of tape, both of which the NRC maintains were unqualified in the installed configurations.

The tape splices are interfacing components between the vendor-supplied motor operators and the system in which they are installed. The tape splices were not the responsibility of the equipment vendor, but of the licensee, as they were put in after installation of the motor operators in the plant. As either the licensee or its contractor had to have subsequently installed these splices, they could not rely on earlier vendor documentation to demonstrate qualification. Further, the installation of these connections should have been made in accordance with approved procedures and in qualified configurations. Such activities were required to be documented and such documentation

would have provided the licensee a record of inspection and assurance of qualification. Absent documentation supporting the qualification of the licensee's own splices, the licensee clearly should have questioned how interfaces between vendor-supplied equipment and the plant electrical system had been made. The raising of such questions would then have led to verification of proper documentation or verification of the installed configuration. Therefore, with or without specific notice from the NRC staff, the licensee should have done internal splice inspections, absent detailed qualification documentation.

The licensee's arguments that the tape splices were qualified are without merit. The tapes splices are quite dissimilar to the molded plastic and metal wire caps for which the licensee attempts a similarity-based qualification argument. Qualification cannot be based on the unsupported logic that the tape splices provide superior mechanical protection compared with the wire caps, and that no moisture barrier is necessary because the wire caps appear to provide none. Additionally, the configuration of the wire caps cannot be established; therefore, the assumption that no moisture intrusion protection was present cannot be substantiated. Post-discovery unsupported engineering judgment of this sort by the licensee and a consultant does not satisfy 10 CFR 50.49 requirements that the licensee have documentation available to support equipment qualification.

The NRC staff notes that the Thomas and Betts wire caps referred to in this regard were subsequently tested by Wyle Laboratories for another licensee. A plant-specific qualified life of only about eight years for a BWR LOCA with no chemical spray was reported in Information Notice 88–81 and such a qualification finding clearly is not acceptable at ANO with its PWR LOCA profile and its use of chemical spray. This finding underscores one of the reasons that unsupported engineering judgments are not acceptable as a basis for qualification. Detailed plant-specific documentation is required.

Testing of the tape splices after their discovery is not sufficient to avoid escalated enforcement. Documentation for the qualification of the tape splices did not exist on November 30, 1985. In fact, the qualification status of these tape splices was uncertain and required additional testing, inspections, and analysis in an attempt to qualify the tape splices. Because 10 CFR 50.49 required splices to be on the master list and qualification to be demonstrated by testing and necessary similarity analysis, the licensee clearly was in violation of 10 CFR 50.49 (d), (f), and (j) at the time of the finding. Notwithstanding the statement made by a representative of Wyle Laboratories, the NRC staff concludes that classification of this item as significant is warranted. The conclusions reached by the Wyle representative were based on an "informal examination" of the splices which does not constitute the testing and analysis required by 10 CFR 50.49 to demonstrate qualification. Further, the examination was performed after the EQ deadline and the NRC inspection. Additionally, the representative's opinion that, based on previous testing, "the splices were capable of passing a qualification test for the relevant function application" was unsupported in that, similarity between the tested splices and installed splices was not established. Finally, though not specifically stated by the licensee or the Wyle representative, the testing relied upon, to form the above opinion, was also apparently performed after the EQ deadline. Therefore, even putting aside the NRC staff's other concerns, the testing could not be used to demonstrate splice qualification as of November 30, 1985.

B. *Terminal Blocks.* The licensee made a number of specific arguments to support its position that the "clearly should have known" test was not met as to the unqualified terminal blocks inside of Limitorque motor operators. With regard to the necessity for the performance of internal inspection of the motor operators, the licensee argued, in part, that it could not have known the NRC staff required such activities because the NRC staff did not even require such a level of inspection by its own inspectors as evidenced by the inspection guidance contained in TI 2515/76 dated March 27, 1986. The NRC staff agrees that TI 2515/76 did not explicitly require such inspections. The inspection guidance was not written to be all encompassing. Rather, it was written to address what at the time were thought to be the likely problem areas in meeting the 10 CFR 50.49 requirements. As it turns out, verification of internal components for motor operators was a more significant issue than anticipated by the guidance. Neither the fact that the problem was more significant than anticipated nor the fact it was not specifically referenced in the inspection guidance demonstrate that the NRC staff accepted prior to November 30, 1985 that this issue did not have to be addressed by licensees. In fact, Franklin Research Center (FRC) Technical Evaluation Report (TER) "Implementation Guidance for New and Corrective Equipment Environmental Qualification" dated April 23, 1983, which is referenced by TI 2515/76 and FRC Report No. 5896–005–2 dated May 1985, which was also relief upon by the NRC staff in preparing for 10 CFR 50.49 inspections, both recognize that internal inspection may be necessary to verify the overall qualification of components such as motor operators.

AP&L also argued that NRC generic correspondence such as IN 83–72 and IN 86–03 did not provide sufficient information to conclude that AP&L or any other licensee clearly should have known of unqualified terminal blocks and tape splices in Limitorque motor operators.

With regard to the applicability of NRC generic correspondence in determining that AP&L clearly should have known of the unqualified components in the limitorque motor operators, the NRC staff concludes that the licensee has, in part, misunderstood the NRC staff's position. The NRC staff, as discussed in the Notice, based its "clearly should have known" finding on the necessity to perform walkdowns absent adequate documentation of qualification as discussed above and in NRC generic correspondence such as the DOR Guidelines and IN 83–72. IN 86–03 had no part in the NRC staff's "clearly should have known" decision because it was issued after the deadline. The discussion of IN 86–03 is included in the cover letter of the Notice in the context of corrective actions taken by AP&L which was discussed in Paragraph 6 of this Appendix.

With respect to the licensee's arguments regarding when walkdowns should include individual component disassembly, the NRC staff's position in this regard has not changed. It has always been required that the installed configuration must represent the tested configuration. NRC Information Notice 83–72 provides examples where components (terminal blocks, wiring, etc.) internal to a Limitorque valve operator were found to be unqualified for the anticipated service condition. The NRC staff agrees with AP&L that it has never been required that a licensee perform inspections of every component in every vendor-supplied assembly. However, the NRC staff did expect that a certain number of assemblies would be inspected as part of the EQ walkdowns. The scope of such inspections would be determined by the quality of the qualification record available. Clearly in this case, the qualification record for motor operators was not outstanding or complete enough to warrant total reliance upon it without field verification.

Had such inspections been properly performed and had the information in the NRC's generic issuances, such as IN 83–72, been properly utilized to determine the types of components of particular concern, the licensee would have clearly found these unqualified components. The position the licensee has taken relative to the information that was provided in IN 83–72 is overly narrow. The important issue raised by the IN was the general one of unqualified components being found in equipment previously thought to be qualified.

With respect to the licensee's argument that it responded responsibly to IN 83–72, based on previous actions it took in identifying unqualified or unidentified terminal blocks, the NRC staff is not persuaded. First, the licensee discusses only in general terms the actions it took in response to various communications with Limitorque prior to the issuance of IN 83–72. Such general statements do not provide the NRC staff with enough information to judge the reasonableness of AP&L actions. Second, and more importantly, the licensee's actions, however extensive, were in response to issues raised by Limitorque, the motor operator vendor. Clearly, IN 83–72 alerted licensees to the fact that vendor documentation alone did not provide reasonable assurance of qualification. Therefore, failing to take further action regarding IN 83–72 based solely on communications with the vendor is not a reasonable position.

The NRC staff has reviewed the letter Limitorque Corporation issued in response to IN 83–72 relied upon, in part, by the licensee and found that the conclusion reached by Limitorque in the last paragraph of the letter, that licensees need take no action with

respect to IN 83-72, is not supported by the body of the letter. The NRC staff rejects the letter as the basis for a licensee not pursuing the issues raised in the IN and finds that the letter in its totality is consistent with the NRC staff's "clearly should have known" finding. Consistent with that point, the NRC found that a number of licensees had acted upon the IN after viewing the Limitorque letter.

The NRC staff was concerned that the Limitorque letter started out describing an isolated problem with terminal blocks at the Midland site and then abruptly went into discussing the generic use of Buchanan 0824 terminal blocks in Westinghouse supplied equipment. The discussion of the Buchanan terminal blocks in Westinghouse equipment is, in the staff's view, significant for both plants with such equipment and those without it. Most importantly, the Midland facility did not have Westinghouse supplied equipment, yet Limitorque chose to discuss this issue among a number of seemingly Midland specific issues. It is clear that the Buchanan terminal block information along with other discussion supplied in the letter about the Midland specific problems should have alerted licensees to the potential for environmental qualification deficiencies as the result of work performed not only by the vendor (Limitorque) but that performed by the nuclear steam supply system provider or the architect engineer. Therefore, it is clear that assurances from the vendor may not provide a sufficient basis for concluding that no problem existed with motor operators because changes to the motor operators may have been required or made by other organizations.

The letter then shifts back to problems characterized as Midland specific including a discussion of unidentifiable terminal blocks. That discussion in the Limitorque letter (#9 of the numbered items) does not provide adequate information to allow a knowledgeable reader to fully understand the situation including whether it was truly only a Midland problem. First, given that the Limitorque qualification tests for motor operators used only certain types of terminal blocks, the letter did not provide a basis for assuring customers that these or other types of unidentifiable terminal blocks did not exist in motor operators at other plants. Second, the letter states that the unidentifiable terminal blocks were used in low voltage control circuits and were identified and found "suitable" for their application. The letter does not answer such questions as whether the terminal blocks were ultimately identified to be of the types that had previously been used in testing, whether they were "suitable" in all possible control circuit applications at Midland as well as at other plants, and if not of a type previously tested, how the suitability discussed in the letter equated to the record of qualification required by 10 CFR 50.49.

The licensee acknowledges in its Response (See page 8 of the licensee's 10 CFR 2.201 response) that the terminal blocks were likely installed by someone other than Limitorque. However, it is AP&L's position that such a conclusion could not have been reasonably reached based on information available prior to the EQ deadline. The NRC staff does not agree with the licensee's conclusion. The NRC staff concludes that the licensee clearly should have known of the terminal block deficiencies prior to November 30, 1985. Had the licensee critically reviewed IN 83-72 and Limitorque's letter responding to it, the licensee should have discovered the deficiencies at issue prior to the November 30, 1985 deadline.

The licensee claims that only four terminal blocks were unidentified at the time of the EQ inspections, and therefore, there was no safety significance. The licensee cites additional testing that was performed to show that the terminal blocks were qualified. The NRC staff concludes that, as discussed above regarding the tape splices and in Paragraph 1 for the general case, this is a significant deficiency. The licensee, at the time of the inspection did not have documentation in its EQ files which would support the qualification of the terminal blocks and had to correct more than a minor file deficiency in an attempt to demonstrate qualification. Therefore, the violation is significant and stands as stated.

4. T-Drains for Limitorque MOVs

AP&L denies that the cited missing T-drains constitute a violation of 10 CFR 50.49. The licensee claims that an analysis was performed and the conclusion reached in 1984 was that the installation of T-drains was not an issue. The licensee cites Limitorque test reports for inside containment that qualified actuators without T-drains. AP&L argues that it further confirmed this position through contacts with an EQ consultant. The licensee also claims that it relied on engineering judgment to conclude that T-drains were not required. AP&L contends that missing T-drains is thus not a qualification issue.

Although the licensee claims to have documented, prior to November 30, 1985, a 1984 conclusion that T-drains were not required for in-containment qualification of Limitorque operators, the NRC inspectors informed the licensee during the July 1986 inspection that the documentation to support this conclusion was not adequate and that T-drains were required. Both the environmental conditions and the motors differed significantly between the Limitorque motor operators tested without T-drains and those installed at ANO, and no evaluation of those differences has been documented. For example, motor configuration and insulation material differences were not addressed, nor was the lack of a post-LOCA cooldown and condensation period in one of the tests relied upon by the licensee. Thus, the licensee failed to document an acceptable analysis to supplement the test reports in order to use them to demonstrate qualification of the motor operators in the applications found at ANO.

Statements of qualification made by Limitorque were without an adequate technical basis, and do not provide acceptable documentation of qualification. Further, based on a statement made on page 10 of the licensee's 10 CFR 2.201 Response, it appears that Limitorque's statement of qualification was not as unqualified as stated by the licensee. The phrase "if conditions are bounded by tests without them (T-drains)" is important and as discussed above it is the NRC staff's position that tests without T-drains do not bound the conditions at ANO.

The NRC staff has reviewed the April 3, 1985 letter the licensee received from Schneider Consulting Engineers (SCE) concerning motor operator qualification without T-drains, as well as the memoranda attached to that letter. The letter itself provides no technical basis to support the conclusions reached. Both the licensee and its contractor clearly should have recognized that statements not supported by testing and the necessary analysis do not constitute the qualification record required by 10 CFR 50.49. The consultant's submittal fails to provide any basis to support the similarity between the motor operators in use at ANO to those tested without T-drains. Further, the consultant fails to analyze differences between the environments used during testing of the motor operators without T-drains and the postulated accident environment of the ANO containment in order to establish the similarity of environments.

The memoranda attached to the SCE letter also fails to provide any information that could be used to demonstrate qualification. In fact, the memorandum documenting a conversation with a Mr. Drab of Limitorque Corporation provides what could be considered a caution about making qualification determinations based on existing Limitorque test results. Mr. Drab apparently did not accept the SCE position and, while he also apparently did not reject it, he did make it clear that conclusions concerning the acceptability of using motor operators without T-drains were solely the user's responsibility. The memorandum documenting the conversation with Mr. N. B. Le of the NRC staff cannot be read to give his, let alone the NRC staff's unqualified approval of the SCE position. The memorandum states that the author told Mr. Le that testing of actuators with pipe plugs (without T-drains) and with T-drains both had successful/acceptable results and that he considered either arrangement qualified. Mr. Le's subsequent agreement with the author's conclusion clearly assumed the accuracy of the author's assertion of qualification. Mr. Le's recollection of the documented conversation is consistent with the above position. He recalls that he agreed with the author that, if SCE had a basis to qualify the motor operators without T-drains then, the issue at Zion was solely one of procedural compliance and not motor operator qualification. The NRC staff views any assumption on the author's part that Mr. Le accepted his qualification argument based on the telephone call as unreasonable because neither Mr. Le nor any member of the NRC staff had an opportunity to review the documentation supporting such an argument.

With respect to the licensee's argument that it relied on engineering judgment, the NRC staff has in the past and continues to find it acceptable when used as part of a documented engineering analysis. In this case, the licensee did not document the engineering judgments made or the bases for those judgments. A record of qualification should be sufficiently detailed such that an

individual knowledgeable in equipment qualification issues would be able to review and understand the basis for the determination that a component is qualified. The record need not contain the answers to every conceivable question. Rather, the record should contain clear and logical information which demonstrates qualification. The adequacy of information contained in the qualification file can only be determined on a case-by-case basis. Undocumented engineering judgment does not provide a complete auditable record nor can it be independently scrutinized. Undocumented engineering judgment creates a void in that a licensee will not know the basis upon which a component was determined to be qualified. Such an approach can lead to significant problems over the life of a plant. The basis and details of the judgment could be redefined by each individual who may attempt to reconstruct the rationale concerning qualification. Consequently, undocumented engineering judgment has been and continues to be of no significant value for the purpose of demonstrating compliance with the EQ rule.

The NRC staff continues to be of the view that the missing T-drains at issue constitute a violation of 10 CFR 50.49. The licensee's arguments to the contrary are not persuasive. Additionally, the NRC staff's position that items such as missing T-drains are safety significant has been discussed earlier in this Appendix.

With respect to the licensee's arguments that the "clearly should have known" test was not met, Limitorque report B0058 requires T-drains for in-containment qualification, and the 1984 Limitorque letter addressing IN 83–72 states that "Qualified Limitorque RH motors require the installation of motor "T" drains in the two lowest drain plug locations." The installation position of the valve/actuator assembly is not known at the time the actuator is shipped from Limitorque. Consequently, the motor "T" drains are placed in the limit switch compartment with installation instructions at the time of actuator shipment. Since the licensee has admitted knowledge of the T-drain concern prior to November 30, 1985, and since there was indeed some written material from Limitorque (including instructions shipped inside the operators) indicating that T-drains could be required for qualification, a more thorough evaluation was appropriate. Examination of available test reports clearly would have shown no adequate qualification test for an operator with class RH motor insulation and no T-drains. Because of this information, plant-specific analyses to determine the applicability of existing reports to the licensee's plants should have been initiated. This was not done. Rather, the licensee chose to rely on undocumented engineering judgment and a consultant's opinion of uncertain bases. These circumstances satisfy the "clearly should have known" test.

5. Mitigation of the Civil Penalty

With respect to the licensee's best efforts, the NRC staff maintains that, while overall best efforts were made by the licensee, significant deficiencies affecting six systems and three dozen components in a single category of components justify the application of only partial mitigation under this factor. Comparison of the application of this factor in this case with its application in previous enforcement actions under the Modified Enforcement Policy finds this application consistent with the past actions. Full mitigation under this factor has only been applied in other Category B actions in which a single qualification problem affecting a moderate number of components was found. In this case, three separate qualification problems were discovered (splices, terminal blocks and T-drains) indicating more than an isolated error in accounting for environmental qualification of equipment.

After reconsidering the licensee's corrective actions in this case, the NRC staff concludes that escalation of the civil penalty under this factor was not warranted. However, the NRC staff does not agree with the licensee that mitigation under this factor is warranted. The licensee should have more promptly identified the deficiencies cited in the Notice by acting more quickly with respect to IN 86–03 which necessitated, even by the licensee's admission, inspecting the motor operator internals. Had the licensee acted in January 1986 rather than delaying until July 1986 to assess the qualification status of the motor operators in ANO Unit 1, which was at power, mitigation under this factor would have been considered.

In summary, the NRC staff rejects the licensee's arguments with respect to best efforts but concludes that neither escalation nor mitigation for corrective actions is appropriate.

6. Inconsistencies in the Application of the Modified Enforcement Policy

The NRC staff has reviewed the enforcement actions which the licensee contends support its position that the Modified Enforcement Policy has been inconsistently applied and that classification of this action as a Category B is unwarranted.

The NRC staff acknowledges that in some cases violations involving T-drains and terminal blocks have resulted in different levels of enforcement action being taken. The NRC staff maintains these cases are consistent with the Modified Enforcement Policy. In deciding what action to take under the Modified Enforcement Policy, the NRC staff considers the facts on a case-by-case basis. Factors that are evaluated include, but are not limited to, the applicability of available test reports, the quality of any required similarity analyses, and the application in which a particular component was employed. Each type of deficiency is evaluated on its own merits. For example, deficiencies where sufficient data exists although not in the qualification file, or where sufficient data is developed during the inspection to support qualification, are not considered to arrive at the categorization under the Modified Policy. Only those items judged significant on their own are aggregated to determine the proper category. If an item is judged to be a minor deficiency, a separate Severity Level IV or V violation is issued.

Of the cases cited by the licensee, for which some enforcement action was taken, the licensee has filed to articulate, beyond indicating that similar components were involved, how the NRC staff erred in its determinations of severity level or appropriate category. In the River Bend case, a Severity Level IV violation was issued because the terminal blocks involved were outside containment and used in a control application. In the case of Diablo Canyon, the tape splices involved were previously accepted as qualified by the NRC staff under the DOR Guidelines but the licensee failed to later provide documentation to meet the 10 CFR 50.49 qualification standard. In both cases, categorization of the violation as a Severity Level IV was appropriate.

For the cases in which, according to the licensee, action had not been taken, the NRC staff provides the following: At Oyster Creek, action has subsequently been taken; at Haddam Neck, enforcement action was determined to be inappropriate because the motor operators involved were replacements that had never been installed in the plant; at Salem, a Severity Level IV violation should have been issued; and at St. Lucie, some enforcement action under the Modified Enforcement Policy should probably have been taken. The isolated failures to take action do not by themselves render this action regarding ANO as an inconsistent application of the Modified Enforcement Policy.

In summary, as discussed above, the NRC staff finds no basis to change categorization of this action based on the previous applications of the Modified Enforcement Policy.

Conclusion

After considering the information and arguments provided by the licensee, the NRC staff finds that the licensee clearly should have known of the deficiencies cited in the Notice, that the deficiencies were significant and constituted more than an isolated problem under the Modified Enforcement Policy, and that the licensee failed to demonstrate that the NRC staff's previous applications of the Modified Enforcement Policy shows that the policy was incorrectly applied in this case. Further, the NRC staff finds that neither escalation nor mitigation of the base civil penalty for the licensee's corrective actions is appropriate in this case. Therefore, the NRC staff concludes that the cited violations constitute a Category B violation that warrants the minimum civil penalty for a Category B violation under the Modified Enforcement Policy which is $50,000.

[FR Doc 90–9475 Filed 4–23–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-278]

Philadelphia Electric Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company (the licensees) for operation of the Peach Bottom Atomic Power Station, Unit No. 3, located in York County, Pennsylvania.

The proposed amendment would revise Technical Specification (TS) Section 4.11.D.2 surveillance requirements for shock suppressors (snubbers) on safety related systems. The amendment would allow a one time extension of about seven months for the performance of required visual inspections of inaccessible snubbers. In October 1989 prior to returning Peach Bottom Atomic Power Station, Unit 3 to power operation, 80% of the inaccessible snubbers were functionally tested and verified operable and 100% of the inaccessible snubbers were visually inspected. The next visual inspections on inaccessible snubbers are currently due to be performed by May 26, 1990. The proposed amendment would permit a delay in the performance of the required visual inspections to no later than December 31, 1990 to allow inspections to be performed during a planned mid-cycle outage in the fourth quarter of 1990.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

With regard to the proposed amendment, the licensee provided a no significant hazards consideration analysis to support a no significant hazards consideration for this amendment as follows:

(1) The proposed change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

This Technical Specification Change Requests (TSCR) involves a one-time increase in the inspection interval for inaccessible mechanical and hydraulic shock suppressors (snubbers). Lengthening the inspection interval has no effect on the probability of an accident since a snubber failure does not initiate an accident. The short duration of this one-time interval extension does not involve a significant increase in the consequences of an accident.

(2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The change proposed by the TSCR does not involve any plant modifications or hardware changes. Increasing the snubber visual inspection interval does not affect the function, installation, location or configuration of any snubbers nor does it affect the design or function of any piping or systems protected by snubbers. Additionally, snubber inoperability does not introduce any new failure modes to protected components or piping.

(3) The proposed change does not result in a significant reduction in the margin of safety.

Prior to startup for the current operating cycle, 80% of the inaccessible snubbers were functionally tested and verified operable and 100% of the inaccessible snubbers were visually inspected and confirmed to be free of discrepancies that could effect operability. These measures were in excess of Technical Specification requirements, and were undertaken in order to provide greater assurance that Unit 3 was starting up with an operable snubber population. Because of the short duration of this one-time inspection interval extension and the results of the most recent visual inspection and functional testing, the proposed change does not involve a significant reduction in the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92(c), and therefore involves no significant hazards consideration. The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 24, 1990, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at Government Publications Sections, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, Project Directorate I–2, Division of Reactor Projects I/II: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 12, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW, Washington, DC 20555, and at the Local Public Document Room located at Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 18th day of April 1990.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Acting Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

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BILLING CODE 7590–01–M

[Docket No. 50–445]

Comanche Peak Steam Electric Station, Unit 1, Texas Utilities Electric Co., et al [1] Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory commission (the Commission), has issued Facility Operating License No. NPF–87 (the license) to Texas Utilities Electric Company (the licensee). This license authorizes operation of the Comanche Peak Steam Electric Station, Unit 1 (the facility), by the licensee at reactor core power levels not in excess of 3411 megawatts thermal in accordance with the provisions of the license, the

[1] The current owners of the Comanche Peak Steam Electric Station are: Texas Utilities Electric Company and Texas Municipal Power Agency. Transfer of ownership from Texas Municipal Power Agency to Texas Utilities Electric Company was previously authorized by Amendment No. 9 to Construction Permit CPPR–126 on August 25, 1988 to take place in 10 installments as set forth in the Agreement attached to the application for Amendment dated March 4, 1988. At the completion thereof, Texas Municipal Power Agency will no longer retain any ownership interest.

Technical Specifications, and the Environmental Protection Plan.

Comanche Peak Steam Electric Station, Unit 1, is a pressurized-water nuclear reactor located at the licensee's site in Somervell County, Texas approximately 40 miles southwest of Fort Worth, Texas.

The application for the license, as amended, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license authorizing full power operation was published in the **Federal Register** on February 5, 1979 (44 FR 6995).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement (NUREG–0775), as supplemented, since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on November 14, 1989 (54 FR 47430, 47431, and 47432).

For further details with respect to this action, see (1) Facility Operating License No. NPF–28, with Technical Specifications (NUREG–1381), Environmental Protection Plan, and Antitrust Conditions; (2) the report to the Advisory Committee on Reactor Safeguards dated November 17, 1981; (3) the Commission's Safety Evaluation Report (NUREG–0797) dated July 1981; Supplement No. 1 dated October 1981; Supplement No. 2 dated January 1982; Supplement No. 3 dated March 1982; Supplement No. 4 dated November 1983; Supplement No. 6 dated November 1985; Supplement No. 7 dated January 1985; Supplement No. 8 dated February 1985; Supplement No. 9 dated March 1985; Supplement No. 10 dated April 1985; Supplement No. 11 dated May 1985; Supplement No. 12 dated October 1985; Supplement No. 13 dated May 1986; Supplement No. 14 dated March 1988; Supplement No. 15 dated July 1988; Supplement No. 16 dated July 1988; Supplement Nos. 17 through 20 dated November 1988; Supplement No. 21 dated April 1989; Supplement No. 22 dated January 1990; Supplement No. 23 dated February 1990; and Supplement No. 24 dated April 1990; [2] (4) The Final Safety analysis Report through Amendment No. 78 dated January 15, 1990; (5) the Environmental Report through amendment No. 3 dated January 8, 1981; and (6) the Final Environmental Statement dated September 1981, supplemented October 1989.

These items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and the Local Public Document Room at the Somervell County Public Library on the Square, P.O. Box 1417, Glen Rose, Texas 76043. A copy of Facility Operating License NO. NPF–87 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Comanche Peak Project Division. Copies of the Safety Evaluation Report and its Supplements 1 through 24 (NUREG–0797) and the Technical Specifications (NUREG–1399) may be purchased by calling (301) 492–9530 or by writing to the Publication Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, DC 20555 or may be purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 17th day of April 1990.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Comanche Peak Project Division, Office of Nuclear Reactor Regulation.

[FR Doc. 90–9477 Filed 4–23–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

President's Council of Advisors on Science and Technology (PCAST)

The President's Council of Advisors on Science and Technology (PCAST) will meet on April 25–26, 1990. The meeting will begin at 9 a.m. in Council of Environmental Quality, Conference Room, 722 Jackson Place, Northwest.

The purpose of the Council is to advise the President on matters involving science and technology.

Proposed Agenda

1. Discussion of issues and topics for potential working group panels.

2. Briefing of the Council on the current activities of OSTP.

3. Briefing of the Council by OSTP personnel and personnel of other agencies on proposed panel studies and procedures.

4. Discussion of composition of working groups.

Portions of the April 25–26 sessions will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b.(c) (1), (2), and (9)(B).

A portion of the discussion panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b.(c)(6).

Because of the security requirements, persons wishing to attend the open portion of the meeting should contact Mrs. Barbara J. Diering (202) 456–7740, prior to 3 p.m. on April 24, 1990. Mrs. Diering is also available to provide specific information regarding time, place and agenda for the open session.

Dated: April 19, 1990.

Barbara J. Diering,

Committee Management Officer.

[FR Doc. 90–9537 Filed 4–20–90; 8:45 am]

BILLING CODE 3170–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval of Collection of Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget under the Paperwork Reduction Act for a currently

[2] Supplement No. 5 was never issued.

approved collection of information. This collection of information, approved under OMB control number 1212–0030, expires on June 30, 1990. The subject collection, which is not contained in a regulation, is a survey of insurance company rates for pricing annuity contracts that is conducted under the auspices of the American Council of Life Insurance. The effect of this notice is to advise the public of the PBGC's request for OMB approval of this extension.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Maangement and Budget, Paperwork Reduction Project (1212–0030), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202–778–8820 (202–778–8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The title of the collection of information for which extension of approval is requested is: Survey of Nonparticipating Single Premium Group Annuity Rates.

The Pension Benefit Guaranty Corporation (PBGC) has promulgated regulations prescribing actuarial valuation methods and assumptions to be used in determining the actuarial present value of benefits under single-employer plans that terminate (29 CFR part 2619) and under multiemployer plans that undergo a mass withdrawal of contributing employers (29 CFR part 2676). The PBGC calculates interest rates under those regulations each month. In order that the rates may reflect current conditions in the investment and annuity markets, the PBGC gathers data from those markets that are used in setting the rates. The Survey of Nonparticiptaing Single Premium Group Annuity Rates is necessary to provide the PBGC with information about the annuity market so that its rates will reflect conditions in that market. The information gathered through the survey is used by the PBGC in determining those rates.

The survey is directed at insurance companies that have volunteered to participate, most of which are members of the American Council of Life Insurance (ACLI). The survey is conducted quarterly. The PBGC estimates that the total annual burden of responding to the survey is 93 hours.

Issued at Washington, DC, this 17th day of April 1990.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 90–9448 Filed 4–23–90; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 18, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Hein-Werner Corp.
Common Stock, $.01 Par Value (File No. 7–5865)
NFC Public Limited Company
American Depository Shares, 5 Pence Par Value (File No. 7–5866)
Phoenix Resource Companies, Inc.
Series A Warrants $.001 Par Value (File No. 7–5867)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 9, 1990, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–9499 Filed 4–23–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. 34–27912; File No. SR–NASD–90–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Service Charges for the Automated Confirmation Transaction Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 9, 1990, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to modify service charges for the Automated Confirmation Transaction Service ("ACT)". The fee for comparison will change from a fixed fee to a variable fee based on number of shares per transaction, and the charge for reporting trades late on trade day will be eliminated.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The ACT Rules for self-clearing firms were approved by the Commission on September 8, 1989 [1] and service charges for ACT were approved on December 19, 1989.[2] The Association is proposing

[1] Securities Exchange Act Release No. 27229 (September 8, 1989), 54 FR 38484.

[2] Securities Exchange Act Release No. 27551 (December 19, 1989), 54 FR 53408.

to reduce the service charges for self-clearing broker/dealers participating in ACT in response to industry concerns regarding overall comparison costs for negotiated trades. For example, the National Securities Clearing Corporation ("NSCC"), the clearing agency that compares all over-the-counter transactions, recently adjusted its service charges and added a netting charge for locked-in trades that, in conjunction with the original ACT fees, would increase costs of comparison for members. The NASD is able to reduce the current ACT rates because of a change in the method of recovering development costs for the service—rather than recouping development expenditures over a three-year period, the time frame has been expanded to five years.

Two components of the ACT service charge will be affected: a modification in the comparison charge and elimination of the charge for late reports submitted to the service on trade day. The original ACT comparison fee was calculated to recoup ACT development costs over three years and to cover current operating costs. Due to the fact that many participants in ACT execute trades in smaller sized transactions, the NASD believes that a variable fee based on the size of the trade would more equitably recover transaction costs. Therefore, the proposed comparison fee is 0.0125 per 100 shares, with a minimum and maximum range of 400 to 7,500 shares. With the variable rate, a 500 share trade would incur a fee of $0.0625 and a trade of 5,000 shares would cost the ACT participant $0.625, rather than the original fee of $.25 each, and no trade would cost more than $0.9375.

In addition to the variable comparison charge, the Association proposes to eliminate the late fee for trade date entries into ACT. The purpose of the fee is to encourage timely reporting of transactions on trade day, but since late reporting of transactions in National Market System securities is a violation of NASD rules, late reporting is a violation of ACT Rules, and the Association has recently submitted a proposal to the Commission emphasizing a members trade reporting obligations [3], the Association believes that the late charge is not necessary at this time.

Finally, the proposed rule change clarifies that the $50 monthly terminal fee applies to ACT-only terminals, and would not be assessed against terminal used for other purposes, such as a Level 2/3 terminal or a NASDAQ Workstation.

The Association proposes to make the reduction in ACT rates effective as of April 2, 1990, so that assessments for the month of April will have a uniform rate and will give participants the benefit of fee reductions for the entire month, rather than beginning of the date of filing for immediate effectiveness with the Commission.

The statutory basis for the proposed rule change is found in section 15A(b)(5) of the Securities Exchange act of 1934. Section 15A(b)(5) requires that the rules of the Association "provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls." The ACT service charges proposed in this filing have been formulated on the basis of the costs associated with developing and operating that service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not foresee any burden on competition by the proposed rule change not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A) of the Securities Exchange of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4 because the proposal is "establishing or changing a due, fee, or other charge." At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of the NASD. All submissions should refer to the File Number SR–NASD–90–19 and should be submitted by May 15, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 17, 1990.

Jonathan G. Katz

Secretary.

[FR Doc. 90–9385 Filed 4–23–90; 8:45 am]

BILLING CODE 8010–01–M

[3] See File No. SR–NASD–90–14, published for comment in Release No. 34–27827, 55 FR 11283, dated March 20, 1990.

[Rel. No. 34–27911; File No. SR–PSE–90–05]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Confirmation of Good Until Cancelled Orders

On February 14, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule II, section 3(c) to change the monthly and quarterly confirmation dates for good until cancelled ("GTC") orders.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 27770 (March 6, 1990), 55 FR 9390 (March 13, 1990). No comments were received on the proposal.

Currently, pursuant to PSE Rule II, section 3(c), specialists must submit a list of GTC orders to members or floor representatives for confirmation monthly and quarterly. The monthly confirmation date for GTC orders is the third Tuesday of each month, while the quarterly confirmation date is the third

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] See Securities Exchange Act Release No. 27770 (March 6, 1990), 55 FR 9390 for the exact language of the proposed rule change.

Tuesday of the months of March, June, September and December. The Exchange has proposed to amend this rule to change the monthly confirmation date of manual GTC orders to the Tuesday before the second Wednesday of each month,[4] and to change the quarterly confirmation date to the Tuesday before the second Wednesday of the months of March, June, September and December. According to the Exchange, rule II, section 3(c) was designed to establish a procedure and requirement for members to make periodic reconfirmation of GTC orders in order to ensure the continued effectiveness of such orders.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[5] The Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the exchange foster cooperation and coordination with persons engaged in regulating and processing information with respect to, and facilitating transactions in, securities. In particular, the Commission believes that the proposed rule change will facilitate and help to maintain transactions in PSE issues by insuring the continued existence and effectiveness of GTC orders.

In addition, the proposed rule change will bring PSE's confirmation dates for GTC orders in line with the practice of other exchanges.[6] Furthermore, the proposal establishes different confirmation dates for manual GTC orders as opposed to SCOREX GTC orders. This timing difference will help to maintain efficiency on the floor by spreading out the confirmation of orders, thereby providing the Exchange with an adequate amount of time to process the required information.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

[4] The monthly date for confirmation of GTC orders in the PSE's Securities Communication Order Routing and Communication System ("SCOREX") will be the Tuesday before the third Wednesday of each month.

[5] 15 U.S.C. 78f (1982).

[6] *See* New York Stock Exchange Rule 123A.55.

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a)(12) (1989).

Dated: April 17, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-9386 Filed 4-23-90; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

April 18, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Corona Corporation
Common Stock, Class A, No Par Value (File No. 7-5855)
Dallas Semiconductor Corporation
Common Stock, $.02 Par Value (File No. 7-5856)
Japan OTC Equity Fund, Inc.
Common Stock, $.10 Par Value (File No. 7-5857)
Kimmins Environmental Service Corp.
Common Stock, $.001 Par Value (File No. 7-5858)
Landmark Land Co., Inc.
Common Stock, $.50 Par Value (File No. 7-5859)
Merry Go Round Enterprises, Inc.
Common Stock, $.01 Par Value (File No. 7-5860)
Motel 6, L.P.
Units, No Par Value (File No. 7-5861)
Nicolet Instrument Corporation
Common Stock, $.25 Par Value (File No. 7-5862)
Southeast Banking Corporation
Common Stock, $5.00 Par Value (File No. 7-5863)
U.S. Bioscience, Inc.
Common Stock, $.005 Par Value (File No. 7-5864)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 9, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-9500 Filed 4-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17438; 812-7019]

Colonial Value Investing Portfolios—Equity Portfolio, et al.; Notice of Application

April 16, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Colonial Value Investing Portfolios—Equity Portfolio (the "Trust"), Colonial Management Associates, Inc. (the "Adviser") and Colonial Investment Services, Inc. (the "Distributor").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) of the 1940 Act from the provisions of sections 18(f)(1), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting the Trust to issue two classes of shares of each of its existing and future series.

FILING DATE: The application was filed on April 20, 1988 and amended on March 16, 1989, December 4, 1989, February 1, 1990, February 14, 1990, and April 2, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 14, 1990, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Colonial Value Investing Portfolios—Equity Portfolio, Colonial Management Associates, Inc. and

Colonial Investment Services, Inc., each having its address at One Financial Center, Boston, Massachusetts 02111.

FOR FURTHER INFORMATION CONTACT: Sheryl Siman Maliken, Staff Attorney, at (202) 272–2190, or Stephanie M. Monaco, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations:

1. The Trust, an open-end, diversified series investment company, is organized as a business trust under the laws of The Commonwealth of Massachusetts. Pursuant to investment advisory and distribution agreements, the Adviser acts as the Trust's investment adviser, and the Distributor acts as the Trust's principal underwriter. The Trust currently has three series: the Growth Series; Diversified Return Series; and Inflation Hedge Series. Applicants request that the proposed exemptive relief extend not only to the Trust's three existing series (each a "Fund" and collectively, the "Funds"), but also to any future series of the Trust of which two classes of shares may be issued on terms substantially similar to the terms of the proposed two classes of shares of each Fund subject to Condition 7 described below.

2. The Trust offers its shares without an initial sales charge, so that investors will have the entire amount of their purchase payments fully invested when the purchase is made. The Trust imposes a contingent deferred sales charge on the proceeds of certain redemptions of the Trust's shares, the amounts of which charges are paid to the Distributor. In no event does the amount of any such charge exceed 5 percent of the aggregate purchase payments made by the investor.

3. Each Fund will be divided into two classes of shares (Class A and Class B) that will differ from each other only in the rate of the distribution fee payable by the Trust in respect of the shares of each class pursuant to the Distribution Plan (the "Plan") relating to the Fund that the Trust has adopted pursuant to Rule 12b–1 under the 1940 Act. Each Fund is the subject of a separate Plan, and the Plan relating to each Fund is identical to the Plans relating to the other Funds. Each Class A share and each Class B share of a Fund will represent an equal pro rata interest in that Fund. The Class A shares of each Fund will have identical voting, dividend, liquidation and other rights, preferences, powers, restrictions, limitations, qualifications, designations and terms and conditions as the Class B shares of that Fund, except that (a) Class A shares will be subject to an additional distribution fee under the Plan to which Class B shares will not be subject, as described below, and (b) each class will vote separately as a class with respect to the Plan relating to the Fund of which that class is a part (that is, any amendment to the Plan which requires shareholder approval or the adoption of a new Plan will require the separate approval of each class of outstanding shares of the Fund to which the Plan relates).

4. The Trust expects to declare a dividend each day for each Fund in an amount that is based on estimates of the Fund's gross dividend income for the quarter. During each quarterly period, the Trust will periodically monitor the estimates and if necessary, will adjust such estimates to give effect to any changes in the assumptions on which the estimates used earlier in the quarter were based. For purposes of calculating these daily dividends, the daily amount available for dividend will be allocated on a pro rata basis to each outstanding share of the Fund regardless of class, and all expenses estimated to be incurred by the Fund for the quarterly period will be allocated daily and will be borne on a pro rata basis by all shares regardless of class, except that Class A shares will bear the additional distribution fee, as described below, which Class B shares will not bear. As a result of this additional distribution fee, which in the calculation of daily dividends will be allocated only to the Class A shares of each Fund, the amount of the daily dividend in respect of each Class A share will ordinarily be less than the amount of the daily dividend in respect of each Class B share of the same Fund. So long as two classes of shares are outstanding, dividends will not be declared if, after giving effect to such dividends, undistributed net investment income would be less than zero determined in accordance with generally accepted accounting principles. Accordingly, the source of all such declarations will be accumulated undistributed net investment income. Dividends and other distributions paid to each class of shares of a Fund will be declared on the same days and at the same times and, except for the effect of the additional distribution fee to which Class A shares are subject, will be determined in the same manner and paid in the same amounts.

5. The Plan relating to each Fund requires the Trust to pay as compensation to the Distributor, out of the assets of the Fund to which the Plan relates, a quarterly distribution fee equal on an annual basis to .25 percent of the Fund's average daily net assets. This basic distribution fee will be collected with respect to all shares of such Fund, regardless of class, and is expected to be used principally to pay the "trail commissions" described below. Each Plan also requires the Trust to pay as compensation to the Distributor an additional distribution fee not exceeding 1 percent, on an annual basis, of the average daily net assets attributable to the Class A shares of the Fund. This additional distribution fee will be accrued daily and will be paid quarterly. The additional fee is payable at the annual rate of 1 percent of the average daily net assets attributable to the Class A shares of the Fund in question, except that, if the amount of estimated daily net investment income (before accrual of the additional distribution fee) attributable to any Fund's Class A shares is insufficient to make provision for the daily increment of this additional distribution fee at the annual rate of 1 percent of the average daily net assets attributable to such shares, the Fund will be obligated to pay for that day as such additional distribution fee only the amount of estimated daily net investment income (before such accrual) which is attributable to such Class A shares. The amount not so accrued will not be payable to the Distributor in any circumstances or at any time.

6. Because the additional distribution fee payable in respect of Class A shares will be accrued only from the amount available for dividends attributable to Class A shares, which amount would, but for the incidence of the additional distribution fee, be payable as a dividend in respect of the Class A shares, the additional distribution fee will reduce only the dividend payable in respect of, and not the net asset value of, the Class A shares of the Fund in question. As a result, no dilution of the relative interests of Class A and Class B shareholders in the assets of any Fund will occur in consequence of the imposition of the additional distribution fee.

7. Only Class A shares will be offered for sale to the public. Subject to the conditions described below, Class A shares will automatically convert to Class B shares at the end of the period ending six years after the end of the

month in which such shares were issued. At such time, each Class A share will automatically convert to a Class B share and will no longer be subject to the additional quarterly distribution fee. Class B shares consist only of Class A shares that have converted to Class B status, and shares purchased by holders of outstanding Class B shares through the reinvestment of dividends and distributions paid in respect of those outstanding Class B shares.

8. The conversion features for shares purchased through the reinvestment of dividends and distributions paid in respect of Class A shares differ from the conversion features applicable to Class A shares purchased other than through reinvestments. Shares purchased through the reinvestment of dividends and other distributions in respect of Class A shares will be treated as Class A shares for purposes of the additional quarterly distribution fee. However, for purposes of conversion to Class B, all shares in a shareholder's Fund account which were purchased through the reinvestment of dividends and distributions paid in respect of Class A shares (and which have not converted to Class B shares as provided in the following sentence) will be considered to be held in a separate sub-account. Each time any Class A shares in the shareholder's Fund account (other than those in the sub-account referred to in the preceding sentence) convert to Class B, an equal pro rata portion of the Class A shares then in the sub-account will also convert to Class B.

9. The conversion of Class A shares to Class B shares is subject to the Trust's obtaining the exemption requested by the application, to the continuing effectiveness of a ruling of the Internal Revenue Service to the effect that the assessment of the additional distribution fee with respect to Class A shares does not result in any Fund's dividends or distributions constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended, and to the continuing availability of an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under federal income tax law. The conversion of Class A shares to Class B shares may be suspended if such a ruling is no longer effective or such an opinion is no longer available.

10. The Distributor will use distribution fees paid by the Trust in part for payments to securities dealers who sell shares of the Trust. Dealer agreements between the Trust and certain securities dealers provide that the Distributor shall pay a securities dealer a commission of up to 4 percent on the sale of Trust shares and a quarterly "trail commission." This trail commission will equal 1/4 of .25 percent (.25 percent on an annual basis) of the average daily net asset value of outstanding Trust shares registered in the name of that dealer as nominee or held in a shareholder account as to which that dealer is the designated dealer of record. For purposes of calculating this trail commission, the net asset value of shares of the Trust will only be included beginning one year after the date those shares were sold. From time to time, the Distributor may also make other commission payments to securities dealers, in addition to or instead of the 4 percent sales commission and the .25 percent trail commission referred to above. To the extent the Distributor does not use the distribution fee for payments to securities dealers (and related interest or carrying charges), the Distributor may use the fee to defray its expenses incurred in distributing shares of the Trust, including preparing, printing, and distributing advertising and sales literature and printing and distributing prospectuses and reports used in connection with the sale of Trust shares.

The distribution fees payable by the Trust under each Plan are payable without regard to whether the amount of the fee is more or less than the Distributor's actual expenses in a particular year of distributing shares of the Fund to which the Plan relates. The Plans also provide that to the extent that any payments made by the Trust to the Adviser, which is the corporate parent of the Distributor, including payment of investment advisory and services fees, may be deemed to be indirect financing of any amounts paid by the Distributor out of its own assets or those of the Adviser, such payments are authorized by the Plans.

Applicants' Legal Arguments and Conclusions: 1. Applicants request exemption under section 6(c) of the 1940 Act to the extent that the proposed issuance and sale of two classes of shares of each Fund, as described above, might be deemed (a) to result in the issuance of a "senior security" within the meaning of section 18(g) of the 1940 Act and thus to be prohibited by section 18(f)(1) of the 1940 Act and (b) to violate the equal voting provisions of section 18(i) of the 1940 Act.

2. The purpose of the proposed division of each Fund into two classes of shares is to relieve the holders of shares that have been outstanding for more than approximately six years of the burden of the additional distribution fee, which is intended to compensate the Distributor for its expenses in connection with the sale of shares of each Fund. Because no front-end sales load is charged in connection with the sale of Trust shares, the fees payable under the Plans constitute the only compensation to the Distributor from either the Trust or its shareholders for the Distributor's services as distributor of Trust shares (except for contingent deferred sales charges in respect of shares that are redeemed within approximately six years of purchase). Among the expenses incurred by the Distributor in connection with the distribution of Trust shares are the commissions, payable at the rate of up to 4% of the amount invested by purchasers of Trust shares, to dealers who sell shares of the Trust. This commission expense associated with sales of Trust shares will ordinarily be incurred by the Distributor at the time each sale occurs. The collection of the additional fee in respect of Class A shares is intended to compensate the Distributor for this commission expense (including interest or carrying charges incurred in order to finance the payment of commissions in advance of the time the amount of such commissions will have been fully recovered either through fees received by the Distributor under the Plans or through contingent deferred sales charges) and other expenses of the Distributor in connection with the distribution of Trust shares. It benefits the shareholders of the Trust for the compensation payments to the Distributor for such expenses to be borne by the shares in connection with which such expenses were incurred, and not to be borne by the holders of shares in respect of the distribution of which the Distributor has already been compensated.

3. The proposed allocation of expenses relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. All shares sold to the public (other than shares issued in payment of dividends and distributions in respect of Class B shares) will be Class A shares and will be subject to the same terms of automatic conversion to Class B status as all other shares sold to the public (other than shares issued in payment of dividends and distributions in respect of Class B shares). All Class B shares (other than those issued in payment of dividends and distributions in respect of other Class B shares) will be shares that have previously been subject (as Class A shares prior to their conversion) to the assessment of the additional distribution fee that applies to all existing and newly-sold Class A

shares, on the same basis as such Class A shares are subject to such assessment. Conversely, all existing and newly-issued shares sold to the public (other than in payment of dividends and distributions in respect of Class B shares) will be Class A shares, and will be entitled to the same rights of automatic conversion to Class B status as were all previously issued shares (other than Class B shares issued in payment of dividends and distributions in respect of Class B shares), including all shares which have already been outstanding for the applicable period of approximately six years after issuance and have therefore already converted to Class B status.

4. The exemption is appropriate and in the public interest, and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions: Applicants agree that the following conditions may be imposed in any order of the Commission granting the relief:

1. The only differences between the Class A and Class B shares representing interests in the same Fund will relate solely to (a) priorities with respect to the payment of dividends, which priorities will reflect only the effect of the different distribution fees payable by each class, and (b) the fact that each class will have a separate class vote with respect to the Fund's Rule 12b–1 Distribution Plan. Also, the designation of each class of shares of the Fund (*i.e.*, as "Class A" and "Class B") will be different.

2. The Rule 12b–1 plans relating to each Fund have been approved and reviewed by the Trust's Trustees and approved by the applicable Fund's shareholders, in accordance with the requirements and procedures set forth in Rule 12b–1, and in the future will be so approved and reviewed as may be required by that Rule should that Rule be amended in the future.

3. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the 1940 Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the two classes of shares. The Trustees, including a majority of the independent Trustees, shall take such actions as are reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own cost would remedy such conflict up to and including establishing new and separately registered management investment companies.

4. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Trust with respect to the dual class system will be set forth in guidelines which will be furnished to the Trustees.

5. The Trustees of the Trust will receive quarterly reports for each Fund which will allow the Trustees to track specifically total performance and the level of dividend and interest income relative to similar funds managed by unaffiliated advisers so as to hold the Adviser accountable for portfolio management in light of the Adviser's fiduciary duty to manage the portfolio investments of each Fund without regard to the distribution fee.

6. So long as two classes of shares are outstanding, dividends will not be declared if, after giving effect to such dividends, undistributed net investment income would be less than zero determined in accordance with generally accepted accounting principles. Accordingly, the source of all such declarations will be accumulated undistributed net investment income. Dividends paid by each Fund with respect to its Class A and Class B shares will be calculated in the same manner and at the same time, on the same day, and will be in the same amount except that the expenses of the additional distribution fee payable in respect of the Class A shares under the Rule 12b–1 Plan relating to such Fund will be borne exclusively by that class. The additional distribution fee payable by each Fund in respect of its Class A shares will be imposed only in such a manner as does not cause the net asset value per share of the Class A shares of such Fund to deviate from that of the Class B shares of such Fund. Specifically, the Trust will calculate, based on projections of each Fund's quarterly net investment income, the amount of estimated daily net investment income of the Fund before accrual of the additional distribution fee. After such time as a Fund first has both Class A and Class B shares outstanding, the amount of such estimated daily net investment income attributable to such Fund's Class B shares will be declared as a dividend in respect of the Class B shares, and the amount of such estimated daily net investment income attributable to such Fund's Class A shares, reduced by the daily increment of the additional distribution fee (the amount of which reduction will be accrued on such day as an expense of the Fund, the amount of such accrual not to exceed the amount of estimated daily net investment income before such accrual attributable to such Class A shares) will be declared as a dividend in respect of the Class A shares.

7. The Applicants acknowledge that the granting of the exemptive order requested by this application will not extend to any future series of shares of the Trust (a "fund") of which two classes of shares are to be issued unless the Trustees, including a majority of the independent Trustees, reasonably determine that the equity investments proposed to be included in the portfolio of the fund are generally of the type that pay sufficient dividends on a sufficiently regular basis so that the fund should be able to achieve a level of net investment income that will allow the fund to declare daily dividends regularly in accordance with the conditions imposed by such exemptive order. In addition, any relief granted by the exemptive order requested by this application will apply to future series of the Trust (a) whose investment adviser is the Adviser or an investment adviser that is under common control with the Adviser (as "control" is defined by section 2(a)(9) of the 1940 Act), (b) whose principal underwriter is the Distributor or a principal underwriter that is under common control with the Distributor (as "control" is defined by section 2(a)(9) of the 1940 Act), (c) which hold themselves out to investors as being related for purposes of investment and investor services, and (d) whose shares are divided into two classes of securities, whose sales load, contingent deferred sales charges, rate of distribution fees, exchange privileges, conversion feature and differences in voting rights are identical to those applicable to Class A shares and Class B shares as described in this application. Any such series will be subject to each of the conditions contained in this application.

8. The Trust's prospectus will describe the services rendered by the Distributor and its compensation under the Plans and the fees payable by the Trust under the Plans for such services.

9. The Applicants acknowledge that the grant of the exemptive order requested by this Application will not imply SEC approval, authorization or acquiescence in any particular level of payments that the Trust may make pursuant to Rule 12b–1 Plans in reliance on the exemptive order.

10. The Trust's prospectus and shareholder reports will fairly disclose the respective total returns to shareholders on the Class A and Class B shares.

11. The minutes of the meetings of the Trustees of the Trust regarding the

deliberations of the Trustees with respect to the approvals necessary to implement initially and to continue the two-class structure will reflect the reasons for determining that the implementation and continuation of the two-class structure is in the best interests of the Funds and such minutes will be available for inspection by the SEC staff.

12. (a) The methodology and procedures for calculating the net asset value and dividends/distributions of the two classes and the proper allocation of expenses between the classes will have been reviewed by an expert (the "Expert") who will render a report to the Applicants prior to the issuance of the first Class B shares, which report will be provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations would be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the 1940 Act and the work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to provide, would be available for inspection by the SEC staff. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" and the ongoing reports would be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

(b) Prior to the issuance of the first Class B share, the Applicants will have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the two classes of shares and the proper allocation of expenses between the classes of shares and this representation will have been concurred with by the Expert in the initial report referred to in paragraph (a) above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in that condition. The Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

13. No sales load, additional distribution fee or like charges (other than the 0.25% distribution fee applicable to all shareholders) will be imposed on any Class B shares of the Trust.

14. If the order is issued, the Trust will comply with the provisions of any rules adopted under section 18 of the 1940 Act, will comply with all positions of the Division of Investment Management and the SEC with respect to the offering of dual classes of shares of mutual funds set forth in SEC releases, including accounting rules and notices issued with respect to exemptive applications, and the Trust will immediately take the steps necessary to comply, to the extent possible.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-9387 Filed 4-23-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17439; 812-7447]

Pacific Mutual Life Insurance Co., et al.

April 16, 1990.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Pacific Mutual Life Insurance Company ("Pacific Mutual"), Pacific Select Variable Annuity Separate Account (the "Separate Account") and Pacific Equities Network ("PEN").

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order permitting (1) the deduction of a mortality and expense risk charge from the assets of the Separate Account imposed under certain individual flexible premium variable annuity contracts (the "Contracts"), and (2) payment to Pacific Mutual from the Separate Account of a charge imposed on Contracts for which the guaranteed death benefit option is elected.

FILING DATE: The application was filed on December 21, 1989 and amended on March 15, 1990.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the Commission by 5:30 p.m., on May 11, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o David R. Carmichael, Esq., Pacific Mutual Life Insurance Company, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney (202) 272-3046 or Heidi Stam, Special Counsel, (202) 272-2060 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from either the Commission's Public Reference Branch in person or the Commission's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations:

1. Pacific Mutual is a mutual life insurance company organized under the laws of the State of California.

2. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. The Separate Account is currently divided into nine sub-accounts each of which will invest exclusively in shares of a corresponding series of the Pacific Select Fund (the "Fund"), an open-end management investment company of the series type.

3. PEN will be the principal underwriter of the Contracts. PEN is a wholly-owned subsidiary of Pacific Financial Holding Company, which is a wholly-owned subsidiary of Pacific Mutual.

4. The Contracts are available for purchase as non-tax qualified retirement plans by individuals and are also eligible for use in connection with tax qualified retirement plans.

5. If the annuitant (or joint annuitants) under a Contract dies during the

accumulation period, Pacific Mutual will pay a death benefit upon receipt of due proof of the annuitant's (or joint annuitants') death and instructions regarding payment to the beneficiary. The death benefit proceeds will be the death benefit reduced by any outstanding contract debt.

6. If the annuitant dies during the accumulation period and prior to age 76, the amount of the death benefit will be the greater of (1) the accumulated value as of the end of the valuation period that due proof of death and instructions regarding payment are received by Pacific Mutual at its home office, or (2) the aggregate premium payments received less any reductions caused by previous withdrawals. If the annuitant dies during the accumulation period and on or after age 76, the amount of the death benefit will be the accumulated value as of the end of the valuation period due proof of death and instructions regarding payment are received by Pacific Mutual at its home office. If the death of the annuitant occurs on or after the annuity start date, no death benefit will be payable, except that benefits under the annuity option selected may be payable to the joint annuitant or the beneficiary.

7. At the time the application is completed, the applicant may elect the guaranteed death benefit option, under which, if the annuitant's death occurs while this rider is in force prior to the annuity start date, upon receipt of due proof of death of the annuitant and instructions regarding payment, the death benefit will be the greater of the death benefit described above or the guaranteed death benefit. The guaranteed death benefit is equal to the lesser of (1) the death benefit as described above plus $500,000, and (2) the accumulated value as of the end of the contract anniversary immediately preceding the date due proof of death and instructions regarding payment are received decreased by any partial withdrawals paid since the contract anniversary and increased by any premium payments received since the contract anniversary. The guaranteed death benefit will be reduced by any outstanding contract debt.

8. A monthly charge will be imposed on any Contract for which the guaranteed death benefit option is elected. The monthly charge will be equal to one-twelfth of the pertinent annual percentage, as described below, of the Contract's accumulated value less Contract debt on the Contract date and each monthly anniversary thereafter. The annual percentage will vary with the age of the annuitant on the Contract Date as follows:

Age on contract date	Applicable percentage
0–55	0.05
56–60	0.10
61–65	0.15
66–70	0.25

If there are joint annuitants, the charge will be based upon the age of the younger annuitant. The guaranteed death benefit under this option will continue after age 76. The guaranteed death benefit option is not available for Contracts where the annuitant's age exceeds 70 on the Contract date.

9. A contingent deferred sales charge may be assessed by Pacific Mutual on a full or partial withdrawal, depending upon the amount of time such withdrawn amounts have been held under the Contract. During the first Contract year, the charge applies against the total amount withdrawn attributable to total premium payments made. Each Contract year thereafter, a charge will not be assessed upon one withdrawal of up to 10% of the total premiums paid in the current Contract year and four prior Contract years. If the Contract is surrendered, any amount allocated to the loan account will be included in determining the charge. For purposes of the charge, the withdrawal will be attributed to premium payments in the order they were received by Pacific Mutual. In no event will the amount of any withdrawal charge, when added to any such charges previously assessed against any amount withdrawn from the Contract, exceed 6% of the premiums paid under a Contract. In addition, no charge will be imposed (1) upon payment of death benefit proceeds under the Contract, or (2) upon annuitization if the Contract has been in force two years, and if an annuity option offered under the Contract is elected or proceeds are applied to purchase any other annuity option then offered by Pacific Mutual, and, in each instance, the annuity period is at least five years. The contingent deferred sales charge will be used to recover certain expenses relating to sales of the Contracts, including commissions paid to sales personnel and other promotional costs.

10. Pacific Mutual will deduct a daily charge from the assets of the Separate Account for mortality and expense risks assumed by Pacific Mutual under the Contracts. The charge is equal to an annual rate of 1.25% of the average daily net assets of the Separate Account. This amount is intended to compensate Pacific Mutual for certain mortality and expense risks Pacific Mutual assumes in offering and administering the Contracts and in operating the Separate Account. The 1.25% charge consists of approximately .25% for expense risk and 1.00% for mortality risk. The expense risk is the risk that Pacific Mutual's actual expenses in issuing and administering the Contracts and operating the Separate Account will be more than the charges assessed for such expenses. The mortality risk borne by Pacific Mutual is the risk that the persons on whose life annuity payments depend, as a group, will live longer than the Pacific Mutual's actuarial tables predict. Pacific Mutual also assumes a mortality risk in connection with the death benefit under the Contract. Pacific Mutual may ultimately realize a profit from this charge to the extent it is not needed to cover mortality and administrative expenses, but Pacific Mutual may realize a loss to the extent the charge is not sufficient to cover such expenses.

11. Pacific Mutual deducts a monthly administrative charge beginning on the Contract date and on each monthly anniversary thereafter during the accumulation period. This charge is equivalent to an annual rate of .05% of a Contract's accumulated value less any Contract debt. Pacific Mutual reserves the right to impose this charge on Contracts for which it is currently waived, and to increase this administrative charge, but in no event will the charge exceed 0.15% on an annual basis. The purpose of this charge is to reimburse Pacific Mutual for the expenses associated with administration of Contracts and operation of the Separate Account. Pacific Mutual does not expect to profit from this charge.

12. During the accumulation period, an annual fee of $30 will be deducted on each Contract anniversary to cover the costs of maintaining records for the Contracts. Pacific Mutual reserves the right to impose this charge in the future on such Contracts for which it is currently waived. Pacific Mutual does not expect to profit from this charge.

13. Pacific Mutual submits that it is entitled to reasonable compensation for its assumption of mortality and expense risks, and Applicants represent that the level of the mortality and expense risk charge imposed is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon their analysis of publicly available information regarding comparable contracts of other companies, taking into consideration the particular annuity features of the comparable contracts,

including such factors as: annuity purchase rate guarantees, death benefit guarantees, other contract charges, the frequency of charges, the administrative services performed by the companies with respect to the contracts, the distribution methods, the market for the contracts, investment options under the contracts, and the tax status of the contracts. Applicants represent that they will maintain at their home office, and make available to the Commission, a memorandum setting forth in detail the comparable variable annuity products analyzed and the methodology, and results of, Applicants' comparative review.

14. Applicants submit that it is appropriate for Pacific Mutual to be compensated for its assumption of investment and mortality risks in connection with the guaranteed death benefit option. Without additional compensation, Pacific Mutual would be unable to offer this option. Applicants represent that the level of the charge imposed on Contracts for which the guaranteed death benefit option is elected is reasonable in relation to the risks assumed. Applicants state that this representation is based upon their analysis of the risks assumed in connection with the offer of the guaranteed death benefit option, taking into consideration such factors as: historical one year return and risk arising from investment in securities, mortality experience for different ages, potential reserve requirements, distribution methods and expectations, and investment options under the Contract. Applicants represent that they will maintain at their Home Office, and make available to the Commission upon request, a memorandum setting forth the methodology underlying this representation.

15. Applicants acknowledge that revenues generated by the contingent deferred sales charge are not expected to cover Pacific Mutual's actual costs related to the distribution of the Contracts. To the extent that all sales expenses are not recovered from the charge, such costs will be paid from Pacific Mutual's general account assets, which may include any ultimate profit derived from the mortality and expense risk charge and from the guaranteed death benefit charge that is imposed on Contracts for which the guaranteed death benefit option is elected. In such circumstances, a portion of the mortality and expense risk charge and the guaranteed death benefit charge imposed might be viewed as providing for a portion of the costs relating to distribution of the Contracts.

16. Notwithstanding the foregoing, Pacific Mutual has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the Contracts will benefit the Separate Account and the Contract owners. The basis for Pacific Mutual's conclusion is set forth in a memorandum which will be maintained by Pacific Mutual at its home office and will be available to the Commission. Moreover, Pacific Mutual represents that if the Separate Account invests in any open-end management investment companies that have adopted a plan under Rule 12b–1 under the 1940 Act, the Separate Account will invest only in such companies that have undertaken to have such plans formulated and approved by the particular company's board of directors, a majority of the members of which will not be "interested persons" of such company within the meaning of section 2(a)(19) of the 1940 Act.

Applicants' Conditions

Applicants' agree that the requested order may be expressly conditioned upon the following:

1. The Separate Account's prospectus will prominently disclose in the summary that the guaranteed death benefit and accompanying charge is totally optional.

2. Applicants will include information regarding the charge imposed on Contracts for which the guaranteed death benefit option is elected in the fee table required by Form N–4. In this regard, the guaranteed death benefit charge will be listed as a separate expense in the expense portion of the fee table and will be included in the example for the Separate Account. In addition a footnote will be added to the fee table reminding Contract owners that they may choose not to elect the guaranteed death benefit option and that they may cancel the option at any time and thereby avoid the fee.

3. Applicants will comply with the provisions of Rule 26a–3 under the 1940 Act or any other rule affecting the deduction of guaranteed death benefit charges from the assets of the Separate Account, if and when such a rule is adopted by the SEC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–9388 Filed 4–23–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25072A]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 19, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 7, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ford Motor Company; Rouge Steel Company (31–842)

On April 13, 1990 (HCAR No. 25072), the Commission issued a notice of the filing by Ford Motor Company ("Ford"), The American Road, Dearborn, Michigan 48121 and Rouge Steel Company ("Rouge"), 3001 Miller, Dearborn, Michigan 48121, both Delaware corporations, which stated that Ford and Rouge: "have filed an application for an order under section 2(a)(4) of the Act declaring that each is not a 'gas utility company' because each (i) is primarily engaged in a business other than that of a gas utility company, and(ii) distributes at retail only a small amount of natural gas." The first paragraph of the notice should be and is hereby corrected to state, in pertinent part, that Ford and Rouge: "have filed an application for an order under section 2(a)(3) of the Act declaring that each is not an 'electric utility company' because each (i) is primarily engaged in a

business other than that of an electric utility company, and (ii) sells at retail only a small amount of electric energy." The last date for submitting comments and requests for hearing remains May 7, 1990.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-9533 Filed 4-20-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17440; 812-7475]

Zweig Series Trust; Notice of Application

April 17, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Zweig Series Trust, formerly Drexel Series Trust.

RELEVANT 1940 ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the 1940 Act and Rules 22c-1 and 22d-1 thereunder.

SUMMARY OF APPLICATION: The applicant seeks an amendment to an existing order under section 6(c), as previously amended (the "Existing Order"), which permits, among other things, the applicant to impose a contingent deferred sales load (a "CDSC") on redemptions of its shares in certain cases. The applicant has eliminated the CDSC which otherwise would have been applicable to new purchases of shares and has instituted a front-end sales load. The requested relief would permit the applicant to impose a CDSC on redemptions of shares with respect to which the front-end sales load was initially waived if the redemption of the shares is made within 90 days of the date of purchase.

FILING DATE: The application was filed on February 12, 1990 and amended on March 30, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 15, 1990, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 25 Broadway, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Robert B. Carroll, Staff Attorney, at (202) 272-3043, or Jeremy N. Rubenstein, Branch Chief, at (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The applicant is a diversified, open-end management investment company registered under the 1940 Act. The applicant was organized as a business trust under the laws of the Commonwealth of Massachusetts on September 24, 1984. The applicant currently offers ten series of shares.

2. The applicant's investment adviser is Zweig/Glaser Advisers (the "Adviser") and its principal distributor is Zweig Securities Corp. (the "Distributor"). Before September 2, 1989, the applicant's adviser and distributor were, respectively, Drexel Management Corporation and Drexel Burnham Lambert Incorporated.

3. The Existing Order permits, among other things, the applicant to impose a CDSC on certain redemptions of its shares and to waive the CDSC in certain circumstances. However, the applicant has instituted a front-end sales load on purchases of shares of all of its series, except the Money Market Series, made on or after September 2, 1989, and does not impose a CDSC on redemptions of shares purchased after that date. The front-end sales load is waived for purchases by or on behalf of any officer, director, trustee, account executive, or full-time employee (or a spouse or child of any such person) of the applicant, the Adviser, or the Distributor, or by any employee (or a spouse or child of any such person) of any National Association of Securities Dealers ("NASD") member (a "Qualified Purchase").

4. In connection with the institution of the front-end sales load, the applicant now seeks an amendment to the Existing Order to permit it to impose a CDSC on redemptions of shares with respect to which the front-end sales load was initially waived if the redemption of the shares is made within 90 days of a Qualified Purchase. The CDSC will be equal to the applicable front-sales load otherwise waived on the lesser of the net asset value of the shares at the time of purchase or the net asset value at the time of redemption.

5. The maximum amount of the CDSC, or any combination of deferred sales load and any sales load payable at the time the shares are purchased, will not exceed the maximum sales charge that could have been imposed at the time the shares were purchased under Article III, section 26(d) of the Rules of Fair Practice promulgated by the NASD. No amount will be charged to shareholders or the applicant's funds that is intended as payment of interest or any similar charge related to a CDSC. No CDSC will be imposed on an amount that represents an increase in the value of applicant's shares due to capital appreciation, nor will any CDSC be imposed on shares, or amounts representing shares, purchased through reinvestment of dividends or capital gain distributions.

6. The applicant requests that the Existing Order, as modified pursuant hereto, extend to any additional future series or classes of shares of the applicant and any open-end management company established or acquired in the future by the Adviser or any affiliated person of the Adviser, as defined in section 2(a)(3) of the 1940 Act, that is part of the same group of investment companies, as defined in Rule IIa-3 under the 1940 Act, as the applicant.

Applicant's Legal Conclusions: Applicant submits that the requested exemption is appropriate and in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act. The intended effect of the waiver of the sales load on Qualified Purchases is to encourage those individuals who may be involved in the management, administration, or marketing of the shares of the applicant to acquire and maintain an equity position in the applicant. To further promote this objective, and because short-term trading in shares of the applicant would defeat the purpose of the waiver, applicant has proposed the CDSC described above. The effect of the imposition of the CDSC upon the redemption of shares purchased in a

Qualified Purchase would merely be to impose a condition on the availability of the waiver of the front-end sales load, namely that shares purchased subject to the waiver be held for 90 days.

Applicant's Condition: The applicant will comply with the representations in the application concerning its CDSC arrangements and the provisions of proposed Rule 6c–10 under the 1940 Act, as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–9389 Filed 4–23–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2410; Amendment #1]

Georgia; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the amendment to the President's declaration, dated March 28, 1990, to include Bibb, Butts, Dooly, Early, Fulton, Harris, Heard, Macon, Meriwether, Muscogee, Newton, Pike, Polk, Pulaski, Stewart, Talbot, Upson and Wilcox Counties as a result of damages caused by severe storms and tornadoes which occurred between February 3 and March 30, 1990.

In addition, applications for economic injury from small businesses located in the contiguous counties of Baker, Ben Hill, Bleckley, Calhoun, Chattahoochee, Cherokee, Clayton, Crawford, Crisp, De Kalb, Dodge, Fayette, Forsyth, Gwinnett, Henry, Houston, Jasper, Jones, Lamar, Marion, Miller, Monroe, Morgan, Peach, Quitman, Randolph, Clay, Rockdale, Schley, Seminole, Spalding, Sumter, Taylor, Telfair, Troup, Turner, Twiggs, Walton, and Webster and the counties of Barber, Chambers, Henry, Houston, Jackson, Lee and Russell in the State of Alabama may be filed until the specified date at the previously mentioned location. Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is April 24, 1990, and for economic injury until the close of business on November 23, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 3, 1990.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90–9393 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–10–M

[Declaration of Disaster Loan Areas #7053, 7054 and 7055]

Georgia (and Contiguous Counties in Florida and South Carolina); Declaration of Disaster Loan Area

Bryan, Camden, Chatham, Glynn, Liberty and McIntosh Counties and the contiguous Counties of Brantley, Bulloch, Charlton, Effingham, Evans, Long, Tattnall, and Wayne in the State of Georgia; Nassau County in the State of Florida; and Jasper County in the State of South Carolina, constitute an Economic Injury Disaster Loan Area due to damages caused by a freeze which occurred during December 1989. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on January 9, 1991 at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th floor, Atlanta, GA 30308, or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned to this declaration for economic injury are: 705300 for the State of Georgia, 705400 for the State of South Carolina and 7055 for the State of Florida.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 9, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90–9394 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2416]

Kansas; Declaration of Disaster Loan Area

Harvey County and the contiguous Counties of Butler, Marion, McPherson, Reno, and Sedgwick in the State of Kansas constitute a disaster area as a result of damages from tornadoes which occurred March 12 and 13, 1990. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 8, 1990 and for economic injury until the close of business on January 9, 1991 at the address listed below: Disaster Area 3 Office, Small Business Administration, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155, or other locally announced locations.

The interest rates are:

For Physical Damage:

Homeowners with Credit Available Elsewhere: 8.000%.
Homeowners without Credit Available Elsewhere: 4.000%.
Businesses with Credit Available Elsewhere: 8.000%.
Businesses and Non-Profit Organizations without Credit Available Elsewhere: 4.000%.
Others (Including Non-Profit Organizations) with Credit Available Elsewhere: 9.250%.

For Economic Injury

Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere: 4.000%.

The number assigned to this disaster for physical damage is 241612 and for economic injury the number is 705600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 10, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90–9395 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2412; Amendment #2]

Mississippi; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with notification by the Federal Emergency Management Agency of amendment to the President's declaration, dated March 12, 1990 and April 3, 1990 to include Copiah, George, Greene, Harrison, Jackson, Kemper, Lincoln, Madison, Marion and Perry Counties as a result of damages caused by severe storms, tornadoes, and flooding, from January 24, through and including March 15, 1990.

In addition, applications for economic injury from small businesses located in the contiguous Attala, Claiborne, Hancock, Holmes, Noxubee, Winston,

and Yazoo in State of Mississippi may be filed until the specified date at the previously mentioned location. Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same, i.e., the termination date for filing applications for physical damage is April 30, 1990, and for economic injury until the close of business on November 28, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 6, 1990.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 90-9396 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #7050]

Mississippi; Declaration of Disaster Loan Area

Hancock, Harrison and Jackson Counties and the contiguous counties of George, Pearl River, and Stone in the State of Mississippi, Mobile County in the State of Alabama, and St. Tammany Parish in the State of Louisiana constitute an Economic Injury Disaster Loan Area due to damages caused by heavy rainfall (flooding) and a freeze which began December 21, 1989. Eligible small businesses without credit avaialble elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on January 9, 1991, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, GA 30308 or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned to this declaration for economic injury are 705000 for the State of Mississippi, 705100 for the State of Alabama, and 705200 for the State of Louisiana.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 9, 1990.

Susan Engeleiter,

Administrator.

[FR Doc. 90-9397 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-5246]

Business Capital Investment Co., Inc.; Surrender of License

Notice is hereby given that Business Capital Investment Company, Inc. (BCI), 175 Northpoint Avenue, Suite 214, High Point, North Carolina 27260, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). BCI was licensed by the Small Business Administration on December 29, 1988.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on March 30, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 9, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-9409 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0506]

Republic SBI Corporation; Surrender of License

Notice is hereby given that Republic SBI Corporation, 452 Fifth Avenue, New York, New York 10018 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (The Act). Republic SBI Corporation, was licensed by the Small Business Administration on April 4, 1988.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on April 5, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 12, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-9410 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Santa Ana, will hold a public meeting at 9 a.m. to 11:30 a.m. on Tuesday, April 24, 1990 at Landmark Bank, Second Floor Conference Room, 401 W. Whittier Boulevard, La Habra, California 90631, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John S. Waddell, District Director, U.S. Small Business Administration, 901 W. Civic Center Drive—Suite 160, Santa Ana, California 92703-2352, (714) 836-2494.

Dated: April 10, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-9398 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of San Francisco, will hold a public meeting on Tuesday, May 22, 1990 at 10 a.m. at the U.S. Small Business Administration Sacramento Branch Office, 660 "J" Street—Suite 215, Sacramento, California, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call the Office of District Director, U.S. Small Business Administration, San Francisco District Office, 211 Main Street, 4th Floor, San Francisco, California 94105-1989, (415) 744-6801.

Dated: April 17, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-9399 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Georgia, will hold a public meeting from 12 Noon on Thursday, April 19, 1990, to 12 Noon on Friday, April 20, 1990, at the Holiday Inn, 515 Holiday Drive, Dalton, Georgia 30702.

The purpose of the meeting is to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Wilfred A. Stone, District Director, U.S. Small Business Administration, 1720 Peachtree Road NW., 6th Floor, Atlanta, Georgia 30309—(404) 347–4749.

Dated: April 10, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–9400 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region V Advisory Council, located in the geographical area of Minneapolis/St. Paul, will hold a public meeting on May 18, 1990 at 1 p.m. at the U.S. Small Business Administration District Office, 610–C Butler Square, 100 North Sixth Street, Minneapolis, Minnesota, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Edward A. Daum, District Director, U.S. Small Business Administration, 610–C Butler Square, 100 North Sixth Street, Minneapolis, MN 55403, 612–370–2306.

Dated: April 13, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–9401 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

Region VII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, will hold a public meeting from 8:30 a.m. to 11:30 a.m. on Wednesday, May 9, 1990 at U.S. Small Business Administration office, 11145 Mill Valley Road, Omaha, Nebraska, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Glenn Davis, District Director, U.S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska 68154, telephone (402) 221–3620.

Dated: April 17, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–9402 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council; Change of Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Columbia, public meeting scheduled for Tuesday, May 1, 1990 has been changed to Monday, May 14, 1990, at 10 a.m., at the Holiday Inn, 2390 Broad Street, Sumter, South Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call John C. Patrick, Jr., District Director, U.S. Small Business Administration, P.O. Box 2768, 1835 Assembly Street, room 358, Columbia, South Carolina 29202, 803/677–5339.

Dated: April 10, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–9403 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

Region VIII Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region VIII Advisory Council, located in the geographical area of Sioux Falls, will hold a public meeting on Friday, May 4, 1990, from 9 a.m. to 3 p.m., at the Metropolitan Federal Bank, 133 South Main Avenue, Sioux Falls, South Dakota 57102, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101, Security Building, 101 South Main Avenue, Sioux Falls, South Dakota 57102, (605) 330–4231.

Dated: April 13, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–9404 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting at 8:30 a.m. on Thursday, May 10, 1990 at Natchez Trace State Resort Park, Wildersville, Tennessee 38388, to discuss such matters as may be presented by members, staff of the Small Business Administration and others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, 50 Vantage Way, Suite 201, Nashville, Tennessee 37228–1500, telephone (615) 736–5850.

Dated: April 13, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–9405 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Montpelier, will hold a public meeting at 4:30 p.m., Thursday, May 3, 1990, at The Woodstock Inn, Woodstock, Vermont, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ora H. Paul, District Director, U.S. Small Business Administration, Federal Building, 87 State Street, P.O. Box 605, Montpelier, Vermont, 05602, (802) 828–4422.

Dated: April 10, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90–9406 Filed 4–23–90; 8:45 am]

BILLING CODE 8025–01–M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, will hold a public meeting from 9 a.m. to 2 p.m. on Wednesday, May 2, 1990 at the Holiday Inn Downtown, 301 West Franklin Street, Richmond, Virginia 23219, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Dratin Hill, Jr., District Director, U.S. Small Business Administration, P.O. Box 10126, Federal Building, Richmond, Virginia 23240, (804) 771–2741.

Dated: April 10, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-9407 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Madison, will hold a public meeting at 8 a.m., CST, Friday, May 11, 1990, at The Marc Plaza Hotel, Milwaukee, Wisconsin, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call C.A. Charter, District Director, U.S. Small Business Administration, 212 East Washington Avenue, room 213, Madison, Wisconsin 53703, (608) 264-5205.

Dated: April 10, 1990.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-9408 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0540]

CIBC Wood Gundy Ventures, Inc.; Application to Operate as a Small Business Investment Company Licensee

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by CIBC Wood Gundy Ventures, Inc. (CIBC), 425 Lexington Avenue, 9th Floor, New York, New York 10017, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name and address	Title
John R. Farrell, 24 Hobart Ave., Short Hills, New Jersey 07078.	President, Treasurer, and Director.
Gordon H. Muessel, 420 E. 58th Street, Apartment 9A, New York, New York 10022.	Senior Vice President, Secretary, and Director.
Richard E. Venn, 377 Glencairn Ave., Toronto, Ontario M5N 1V2 Canada.	Director.
CIBC Inc., 425 Lexington Ave., New York, New York 10017.	100% Shareowner.

CIBC Inc., a corporation organized and existing under the laws of the State of Delaware, owns 100% of the issued and outstanding capital stock of CIBC Wood Gundy Ventures, Inc. CIBC Inc.'s beneficial owner is Canadian Imperial Bank of Commerce, an Ontario, Canada corporation.

The Applicant, CIBC, a New York Corporation will begin operations with $1,025,000 paid-in capital and paid-in surplus. CIBC will conduct its activities primarily in the State of New York but will consider investments in businesses in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 6, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-9411 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5538]

First Pacific Capital Corp.; Application To Operate as a Small Business Investment Company Licensee

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by First Pacific Capital Corporation (FPCC), 59-11 56th Street, Maspeth, New York 11378, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et seq.*).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name and address	Title	Percentage of ownership
Michael Cipriani, 260 First Street, Yonkers, New York 10704.	Loan Officer	0
Patrick K. Huang, 1469 Greene Avenue, Brooklyn, New York 11237.	Chairman, President and Director.	37
Terrina H. Wu, 154-16 64th Avenue, Flushing, New York 11367.	Secretary, Treasurer and Director.	7.4
Kuo-Yee Huang, 145 Central Avenue, Brooklyn, New York 11221.	Director	14.8
Ching-Tso Chen, Kaohsiung Hsien, Taiwan.	Director	14.8
Hong-Tien Lai, 44 Country Ridge Road, Scarsdale, New York 10583.	Director	7.4
James Chengchih Suen, 1691 Hendrickson Ave., N. Merrick, New York 11566.	Director	7.4
Tsung-Wen Hsieh, 61-25 211th Street, Bayside, New York 11364.	7.4	
Miaw-Ling Chen, 48-12 192nd Street, Fresh Meadows, New York 11365.	Director	3.7

The Applicant, FPCC, a New York Corporation will begin operations with $1,200,000 paid in capital and paid in surplus. FPCC will conduct its activities primarily in the State of New York but will consider investments in businesses in other areas in the United States.

As an SBIC under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended, from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantage.

Matters involved in SBA's consideration of the application include

the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: March 30, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-9412 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04-0253]

Florida Capital Ventures, Ltd.; Issuance of a Small Business Investment Company License

On December 27, 1989, a notice was published in the **Federal Register** (54 FR 247) stating that an application has been filed by Florida Capital Ventures, Ltd. with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1990)) for a license to operate as a small business investment company.

Interested parties were given until close of business Friday, January 26, 1990 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-0253 on March 5, 1990, to Florida Capital Ventures, Ltd. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 11, 1990.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 90-9413 Filed 4-23-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 46898]

Japan Charter Allocation Proceeding (1990/1991); Assignment

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, room 9228, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-2142.

John J. Mathias,

Chief Administrative Law Judge.

[FR Doc. 90-9478 Filed 4-20-90; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 90-022]

Lower Mississippi River Waterway Safety Advisory Committee; VTS Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. I) notice is hereby given of a meeting of the VTS Subcommittee of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Monday, May 7, 1990 at the United States Coast Guard Support Center, 4640 Urquhart Street, New Orleans, Louisiana. The meeting is scheduled to begin at 9 a.m. The agenda for the meeting consists of the following items:

1. Call to order.
2. Discussion of previous recommendations.
3. Presentation on Vessel Traffic Service Systems in the U.S.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander Gary A. Bird, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130-3396, telephone number (504) 589-3074.

Dated: April 6, 1990.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 90-9357 Filed 4-23-90; 8:45 am]

BILLING CODE 4910-14-M

[CGD 90-023]

National Boating Safety Advisory Council; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Boating Safety Advisory Council to be held on Monday and Tuesday, May 14 and 15, 1990 at the Denver Marriott Southeast, 6363 East Hampden Avenue, Denver, Colorado, beginning at 9 a.m. and ending at 4 p.m. on both days. The agenda for the meeting will be as follows:

1. Review of action taken at the 44th meeting of the Council.
2. Members' items.
3. Executive Director's Report.
4. Accident Reporting Subcommittee Report.
5. Report on Masthead Lights.
6. Presentation on Hovercraft and Submersible Standards.
7. Presentation on Developments in Personal Flotation Devices (PFDs).
8. Recreational Boating Standards Review Subcommittee Report.
9. Report on the NASBLA Annual Conference.
10. Update on Major New Boating Laws.
11. Consumer Relations Review Subcommittee Report.
12. Update on subchapter T Proposed Changes.
13. Report on the Upcoming 1990 National Safe Boating Week.
14. Presentation on Multiple Use Waterways.
15. Report on the 1990 National Boating Education Seminar.
16. Report on the National Boating Survey.
17. Reply to members' items.
18. Remarks by Chief, Office of Navigation Safety and Waterway Services.
19. Chairman's session.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral

statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G–NAB), Washington, DC 20593–0001, or by calling (202) 267–0997.

Issued in Washington, DC, April 17, 1990.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90–9358 Filed 4–23–90; 8:45 am]

BILLING CODE 4910–14–M

[CGD 90–024]

National Boating Safety Advisory Council; Subcommittee Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. 1), notice is hereby given of meetings of the National Boating Safety Advisory Council's Subcommittees on Accident Reporting, Consumer Relations Review and Recreational Boating Standards Review to be held on Saturday, May 12, 1990, at the Denver Marriott Southeast, 6363 East Hampden Avenue, Denver, Colorado, beginning at 1:30 p.m. and ending at 5:30 p.m. The agenda for each meeting will be to review the status of various projects that have been undertaken by the subcommittee.

Attendance is open to the interested public. With advance notice to the Chairman, members of the public may present oral statements at the meetings. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meetings. Any member of the public may present a written statement to the Council at any time. Additional information may be obtained from Mr. Albert J. Marmo, Executive Director, National Boating Safety Advisory Council, U.S. Coast Guard, (G–NAB), Washington, DC 20593–0001, or by calling (202) 267–0997.

Issued in Washington, DC April 17, 1990.

Robert T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90–9359 Filed 4–23–90; 8:45 am]

BILLING CODE 4910–14–M

Federal Railroad Administration

Petitions for Waivers of Compliance; Borden & Remington Corp.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for waivers of compliance with certain requirements of the federal safety laws and regulations. The individual petitions are described below, including the parties seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Borden and Remington Corporation

Waiver Petition Docket Numbers RSGM–89–22, SA–89–22 and LI–89–7

The Borden and Remington Corporation, located in Falls River, Massachusetts, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223), Safety Appliance Standards (49 CFR part 231) and the Locomotive Safety Standards (49 CFR part 229) for its 95 TM trackmobile vehicle. The company operates a ¼ mile railroad with one industrial grade crossing. All street crossings have protection afforded by a flagman. In addition, petitioner states that there is no history of vandalism and feels that the cost to retrofit them would be difficult to justify.

The Shamokin Valley Railroad Co.

Waiver Petition Docket Number RSGM–89–28

The Shamokin Valley Railroad Co. (SVRR) of Northumberland, Pennsylvania, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. This locomotive will operate over 27 miles of track through rural areas between Mt. Carmel Junction and Sunbury, Pennsylvania. The petitioner states that there is no history of vandalism and feels that the cost to retrofit the existing glazing would be difficult to justify.

The North Shore Railroad Company

Waiver Petition Docket Number RSGM–89–29

The North Shore Railroad Company (NSHR) of Northumberland, Pennsylvania, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. This locomotive will operate over 43 miles of track through rural areas between Northumberland and Berwick, Pennsylvania. The petitioner states that there is no history of vandalism and feels that the cost to retrofit it would be difficult to justify.

Indiana Hi-Rail Corporation

Waiver Petition Docket Numbers RSGM–89–30 and LI–89–8

The Indiana Hi-Rail Corporation (IHRC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for the following eight locomotives: IHRC 216; 221; 327; 332; 334; 352; 442; and 443. These locomotives are operated at various locations on the IHRC system. This system is comprised of unconnected segments of railroad that operate in Indiana, Ohio, and Illinois. The operation is primarily in rural areas at speeds up to 10 mph. They do not have any history of vandalism on any area of their system.

The IHRC seeks a permanent waiver of compliance with the Locomotive Safety Standards (49 CFR 229.117)—Speed Indicators—for the following four locomotives: IHRC 223; 216; 221; and 234. These locomotives operate periodically between Connersville, Indiana and New Castle, Indiana at speeds in excess of 20 mph.

The Minnesota Commercial Railway Company

Waiver Petition Docket Number RSGM–89–31

The Minnesota Commercial Railway Company (MNNR) of Chicago, Illinois, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. A waiver was previously granted to the predecessor railroad, the Minnesota Transfer Railway Company, for six locomotives. The MNNR is now seeking a waiver for five locomotives numbered 100, 302, 303, 304 and 306. The MNNR will utilize the locomotives to perform switching service in the Minneapolis and St. Paul, Minnesota, area. Additionally, there is no history of vandalism in the areas where this locomotive will be operating.

The Ellis and Eastern Company

Waiver Petition Docket Number RSGM–89–32

The Ellis and Eastern Company (EE) of Sioux Falls, South Dakota, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two locomotives. These locomotives will be used in a switching operation in Sioux Falls, South Dakota. The petitioner states that there is no history of

vandalism and that the cost to retrofit these locomotives would place a great financial strain on their budget.

Railroad Switching Services of Missouri, Inc.

Waiver Petition Docket Number RSGM–89–33

Railroad Switching Services of Missouri, Inc. of St. Louis, Missouri, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. This locomotive will service six customers on its seven miles of track in the St. Louis area. The petitioner states that they have not encountered any acts of vandalism.

Central Railroad Company of Indianapolis

Waiver Petition Docket Number RSGM–89–34

The Central Railroad Company of Indianapolis (CERA) of Kokomo, Indiana, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives. These locomotives will be operated at a maximum speed of 25 mph over 120 miles of track in north central Indiana, 90 percent of which is surrounded by farmland. The petitioner states that there is no history of vandalism.

Wyoming Colorado Railroad, Inc.

Waiver Petition Docket Number RSGM–89–35

The Wyoming Colorado Railroad, Inc. (WYCO) of Ogdan, Utah, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for four locomotives and two cabooses. This equipment will be operated in very remote areas in the states of Colorado and Wyoming encompassing the communities of Laramie, Walcott and Saratoga, Wyoming and Walden Colorado. The petitioner states that there is no history of vandalism and that the granting of this waiver would save it approximately $5,000.

The Tuscola and Saginaw Bay Railway Company, Inc.

Waiver Petition Docket Number RSGM–89–36

The Tuscola and Saginaw Bay Railway Company, Inc. (TSB) of Owosso, Michigan, seeks a waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for three locomotives, TSB 1977 and 466, and leased locomotive LN 16. The TSB operates two districts, a 40-mile railroad in the thumb area of Michigan which includes the communities of Vassar, Caro, Reese and Millington, Michigan, and a 450 mile railroad located in the upper part of the lower peninsula of Michigan which includes the communities of Owosso, Cadillac, Yuma, Petosky and Traverse City, Michigan. The two districts are not connected by the carriers own rail line. The TSB stated that the three subject locomotives will be used in yard switching operations and in the rural Vassar area. The carrier said that it has been operating on these lines for six years and no vandalism of any type has been encountered.

Maryland and Delaware Railroad

Waiver Petition Docket Number RSGM–89–38

The Maryland and Delaware Railroad (MDDE) of Federalsburg, Maryland, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for four locomotives. These locomotives will be operated over three light density branch lines, totaling approximately 118 miles, in predominantly low population areas encompassing the communities of Cambridge, Centerville, Chestertown and Snowhill, Maryland and Seaford, Delaware, which are serviced once or twice weekly. The petitioner states that there is no history of vandalism and that the cost to equip these locomotives would be a financial burden, affecting the viability of its operation.

The EnterTRAINment Line

Waiver Petition Docket Number RSGM–89–39

The EnterTRAINment Line seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for all of the previously owned Maryland Midland Railway's passenger rolling stock. EnterTRAINment line has purchased all of the Maryland Midland Railway's rolling stock and has entered into a contract to operate all passenger trains on the railroad. The Maryland Midland Railway presently has a waiver for the passenger equipment, and now that EnterTRAINment Line will be operating it, they wish a continuance of the waiver. The petitioner has stated that the passenger equipment, to date, has suffered no vandalism on moving passenger trains resulting in broken glazing with passengers on board.

The Long Island Rail Road

Waiver Petition Docket Number RSGM–89–40

The Long Island Rail Road (LIRR) seeks a temporary waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for approximately 40 percent of their 760 M–1, multiple-unit electric fleet that have drop sash windows. This temporary waiver would remain in effect until December 31, 1990, by which time, all M–1 drop sash windows would be in compliance with the Safety Glazing Standards.

Sisseton Milbank Railroad, Inc.

Waiver Petition Docket Number RSGM–89–41

The Sisseton Milbank Railroad, Inc. (SMRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive numbered 627. The SMRR began operations on July 12, 1989 over 38 miles of secondary branch line in north-east South Dakota. The territory traversed by the railroad is rural in nature. The operational speed is 10 mph with empty cars and 7 mph with loaded cars. The petitioner states that to date there have been no incidents of vandalism to the locomotive.

Thermal Belt Railway

Waiver Petition Docket Number RSGM–90–1

The Thermal Belt Railway (TBRY) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. The subject locomotive would be operated at a maximum speed of 10 MPH in small rural communities. Additionally, the locomotive would only be operated about 5 hours per day, three days per week. The petitioner states that they will replace any damaged glazing with certified glazing, and that if the damage occurs as a result of vandalism, they will promptly replace all glazing with certified glazing.

A permanent waiver of compliance is sought with the provisions of the Safety Appliance Standards (49 CFR part 231.30)—Locomotive Side Switching Steps—for locomotive TBRY 1. This locomotive will be used to service small rural communities along a 16 mile line in North Carolina. Presently, the side switching steps measure 8 inches deep by 16½ inches wide, only 1½ inches short of the width requirement. The petitioner states that if the waiver is granted, the following will be inserted in its operating rules: Locomotive TBRY 1

will be brought to a complete stop prior to any person getting on or off this locomotive.

Little River Railroad

Waiver Petition RSGM–90–3

The Little River Railroad (LRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for two passenger coaches, LRR 605 and 633. These coaches will be operated in conjunction with a small historical steam passenger operation in a rural area in the vicinity of Angola, Indiana. The petitioner states that the safety glass windows are being replaced with Lexan, a polycarbonate material, as they become defective. The LRR states that the windows which have been replaced were done so because the original glazing material became hazy; but also, several were replaced because of vandalism.

Laurinburg and Southern Railroad Company

Waiver Petition Docket Numbers RSGM–90–4 and SA–90–3

The Laurinburg and Southern Railroad Company (LRS), on behalf of itself and the Nash County Railroad, Red Springs and Northern Railroad, the Saltville Railroad and the Yadkin Valley Railroad, seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 37 locomotives comprised of eight General Electric 70-ton industrial switchers, three General Electric 25-ton industrial switchers, four Alco S–2 switchers, one Alco S–4 switcher, three EMD SW–2 switchers, nine EMD NW–2 switchers, eight EMD SW–1 switcher, and one Plymouth 35–ton industrial switcher. Thirty-six of the locomotives are owned by the LRS and display the LRS initials and are in the numbered series from 101 to 151. The Saltville Railroad locomotive number 3 is not owned but operated by the LRS. These locomotives will be operating on the following railroads and private industrial locations:

The LRS operates on 27 miles of track between Johns, North Carolina and Raeford, North Carolina at speeds that do not exceed 20 mph. Approximately 4,500 loads are handled per year;

Nash County Railroad operates on 21 miles of track between Rocky Mount, North Carolina and Spring Hope, North Carolina at speeds that do not exceed 20 mph. Approximately 4,000 loads are handled per year;

Red Springs and Northern Railroad operates on 11.6 miles of track between Parkton, North Carolina and Red Springs, North Carolina at speeds that do not exceed 20 mph. Less than 1,000 loads are handled per year;

Saltville Railroad operates on .5 miles of track at Glade Spring, Virginia on 2,500 feet of leased track owned by the Norfolk Southern Corporation. Less than 1,000 cars per year are switched on this line;

Yadkin Valley Railroad operates on 62 miles of track between Rural Hall and North Wilkesboro, North Carolina, 30 miles between Rural Hall and Mt. Airy, North Carolina, and eight miles between Rural Hall and Brook Cove North Carolina at speeds that do not exceed 30 mph. Approximately 25,000 car loads are handled per year.

The petitioner states that to date, they have not had any incidents of vandalism. The LRS states that to retrofit the 37 locomotives with certified glazing would create a considerable financial hardship on their operation. Although the request for the waiver is for all 37 locomotives, many of these are currently in operation at private industrial locations under lease agreements.

The petitioner seeks a permanent waiver of compliance with the Safety Appliance Standards (49 CFR 231.30)—Locomotive Side Switching Steps—for the following three locomotives: LRS 150, 151 and Saltville 3. The petitioner feels a waiver is needed because these locomotives were originally designed and built with three stairways.

Tyson Railroad, Inc.

Waiver Petition Docket Number RSGM–90–5

The Tyson Railroad, Inc. (TR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for one locomotive. This locomotive will operate between a feed mill at Ivalee, Alabama and the CSX interchange, 1.6 miles away. The locomotive operates in a remote country area and only operates approximately 22 hours per month. The petitioner states that in addition to the expense involved with replacement, the installation would result in a shut down of rail service and possibly a disastrous effect on its ability to supply feed to Tyson's poultry flocks.

Ohio Central Railroad, Inc.

Waiver Petition Docket Number RSGM–90–6

The Ohio Central Railroad, Inc. (OHCR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR part 223) for Locomotive OHRC 12. The locomotive will be used in seasonal excursion passenger service, light industrial switching, and work train service between Harmon and Zanesville, Ohio, a distance of 71 miles. The petitioner states that the speed generally does not exceed 25 MPH and that they are unaware of any stoning or other incidents of the sort since commencing operations April 9, 1988.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–89–23) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before June 11, 1990 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC, on April 13, 1990.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 90–9362 Filed 4–23–90; 8:45 am]

BILLING CODE 4910–06–M

National Highway Traffic Safety Administration

Denial of Petition To Hold Hearings

This notice sets forth the reason for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 156 of the National Traffic and Motor Vehicle Safety Act (the Act) (15 U.S.C. 1416, 1418), 49 CFR Ch. V Part 557.

On December 12, 1989, Mr. Brian Jarvis petitioned NHTSA to conduct hearings on the question of whether Lee Tire and Rubber Company had reasonably met their obligation to notify owners, purchasers, and dealers of a safety-related defect or failure to comply with a Federal Motor Vehicle Safety Standard (FMVSS) regarding an alleged defect in Lee produced Winston Brand size 33/12.5 R 16.5 tires.

The petitioner alleges that radial cracks developed in the shoulder area of these tires resulting in a slow loss of air pressure and eventually a flat tire on a 1979 Dodge W–300 pick up truck. The petitioner further alleges that these cracks and the subsequent loss of air pressure constitutes a defect and a notification should have advised him of such.

In accordance with part B, section 151 and 152 of the Act, a manufacturer is obligated to furnish notification to the Secretary of Transportation and to owners, purchasers, and dealers, in accordance with section 153 and remedy the defect or failure to comply in accordance with section 154 if the manufacturer or the Secretary determines:

1. That an item of replacement equipment contains a defect and determines that such defect relates to motor vehicle safety; or

2. Determines that such replacement equipment does not comply with an applicable FMVSS prescribed pursuant to section 103 of the Act.

The alleged breach of the manufacturer's obligation to notify and remedy is limited to four Winston Brand wide-based tires, size 33/12.5 R16.5, manufactured by Lee Tire & Rubber Company in its Fayetteville, North Carolina plant in 1987. The tires apparently were certified as conforming to the only applicable Federal Motor Vehicle Safety Standard, FMVSS No. 119. There are no similar complaints about these tires in the agency's files. Neither Lee Tire & Rubber Company nor NHTSA has made a determination that a safety-related defect exists, within the meaning of the Act; thus Lee is under no legal obligation to notify owners, purchasers, or dealers of the existence of a safety-related defect in the tires.

In the absence of any other evidence of a defect in these tires, the agency is able to resolve this matter without holding a hearing, and further allocation of limited agency investigative resources to this matter would not be worthwhile. Therefore, the petition under section 156 of the Act is denied.

Although it is not legally required to do so, the Office of Defects Investigation also has evaluated this petition as if it had been submitted pursuant to section 124 of the Act as a petition to conduct a defect investigation. For the reasons cited above, there does not appear to be reasonable possibility that an order concerning the notification, correction, and remedy of a defect in the subject tires would be issued at the conclusion of an investigation. Therefore, the petition also is denied under section 124.

Authority: Secs. 124, 156, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a, 1416; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on April 18, 1990.

George L. Reagle,

Associate Administrator for Enforcement.

[FR Doc. 90–9363 Filed 4–23–90; 8:45 am]

BILLING CODE 4910–59–M

Public Proceeding Regarding Defect Investigation; Various 1977 Through 1986 Model Year Micro-Mini Motorhomes

Pursuant to section 152(a) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 15 U.S.C. 1412 (the Act) and 49 CFR part 554, the Associate Administrator for Enforcement, National Highway Traffic Safety Administration (NHTSA), has made an Initial Determination that a safety-related defect exists in approximately 25,000 micro-mini motorhomes manufactured between 1977 and 1986. The micro-mini motorhomes involved were built on light truck chassis similar or identical to those used for mini-pickup trucks. These chassis were originally equipped with rear axles in a single wheel configuration. The manufacturers of most of the motorhomes covered by this determination added aftermarket dual rear wheels (or dual rear wheels of their own manufacture). In addition, the manufacturers of most of the covered vehicles added additional components to the chassis that caused overloading of the vehicle and/or the rear axle.

The chassis utilized for almost all of these vehicles were manufactured by the Toyota Motor Company. The manufacturers of the motorhomes covered by this Initial Determination are: Coachman, Blue Marlin, Damon, Esquire, EZ Rider, Four Seasons, Gardner-Pacific, Granville, Huntsman, Keystone, Leisure Odyssey, Odyssey, Mirage of Elkhart, Monterey Leisure, National RV (Dolphin and Sea Breeze), New Horizon, New World, Perris Valley Campers, Ranger, RBR, Rockwood, Saddleback, Sandtana, Shasta, Sun-Land Express, Sunline, Sunrader, Travette, Voyager, and Western RV. Motorhomes with rear axles furnished by the axle or chassis manufacturer with original equipment dual rear wheels are not included in this determination.

NHTSA's investigation revealed approximately 440 complaints of problems associated with aftermarket dual rear wheels and/or overloading on these vehicles. These complaints included reports of 57 accidents and 16 injuries resulting from rear wheel, axle, suspension, or associated failures. The most frequently reported serious safety related problem involved 63 reports of separation of the dual rear wheel assemblies from the vehicle.

All involved micro-mini motorhome manufacturers as well as other interested persons are invited to present data, views, and arguments regarding the Initial Determination through written and/or oral presentation.

Written comments should be marked "Comments for Investigative Case C87–001" on the outside of the envelope and on the first page, and should be submitted no later than May 18, 1990 to the Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

NHTSA will also hold a public meeting on this subject beginning at 10 a.m. on Wednesday, May 23, 1990, in room 2230 of the Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, DC 20590. Persons wishing to make oral presentations at the meeting are requested to notify Mrs. Judy Taylor, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street SW., room 5326, Washington, DC 20590 (telephone (202) 366–2850) before close of business on May 11, 1990. Such persons should indicate the approximate amount of time they wish to be allocated for their presentation. In addition, speakers are requested to submit a copy of their presentation or an outline of their anticipated comments to the Office of Defects Investigation by May 18, 1990.

The agency's investigative file in this matter is available for public inspection during regular working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, room 5108, 400 Seventh Street SW., Washington, DC 20590 (telephone (202) 366–2768).

Authority: Sec. 152, Pub. L. 93–492, 88 Stat. 1470 (15 U.S.C. 1412); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on April 18, 1990.

Robert F. Hellmuth,

Acting Associate Administrator for Enforcement.

[FR Doc. 90–9390 Filed 4–23–90; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 79
Tuesday, April 24, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 55, page 14154, April 16, 1990.

PREVIOUSLY ANNOUNCED DATE OF MEETING: April 18, 1990.

CHANGES: The meeting was cancelled.

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Dated: April 19, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–9594 Filed 4–20–90; 1:27 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 55, page 14154, April 16, 1990.

PREVIOUSLY ANNOUNCED DATE OF MEETING: April 19, 1990.

CHANGES: The meeting was cancelled.

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Dated: April 19, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–9595 Filed 4–20–90; 1:27 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Friday, April 27, 1990; 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS# 5556.

The Office of General Counsel staff will give legal advice to the Commission on an enforcement matter.

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90–9596 Filed 4–20–90; 8:45 am]

BILLING CODE 6355–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) Wednesday, May 2, 1990.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street N.W., Washington, D.C. 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations.

Closed Session

1. Litigation Authorization: General Counsel Recommendations.
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the *Federal Register*, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663–7100 at any time for information on these meetings.) **"CONTACT PERSON FOR MORE INFORMATION:"** Frances M. Hart, Executive Officer on (202) 663–7100.

This Notice Issued April 19, 1990.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 90–9542 Filed 4–20–90; 10:40 am]

BILLING CODE 6750–06–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, April 30, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 20, 1990

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–9632 Filed 4–20–90; 3:55 pm]

BILLING CODE 6210–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 19, 1990.

TIME AND DATE: 10:00 a.m., Thursday, April 26, 1990.

PLACE: Room 600, 1730 K Street N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Mountain Parkway Stone, Inc.*, Docket No. KENT 89–27–M. (Issues include whether the judge erred in concluding that the Secretary of Labor had failed to prove a violation of 30 CFR § 57.9002.)

STATUS: Closed [Pursuant to 5 U.S.C. § 522b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

2. *Greenwich Collieries, Division of Pennsylvania Mines Corp*, PENN 85–188–R, etc. (Issues include further consideration of the case.)
3. *John A. Gilbert* v. *Sandy Fork Mining Co., Inc.*, Docket No. KENT 86–49–D, etc. (Issues include consideration of Sandy Fork's Petition for Reconsideration.)
4. *Odell Maggard* v. *Chaney Creek Coal Corporation*; Docket No. KENT 86–1–D; Sec. Labor on behalf of Odell Maggard v. Dollar Branch Coal Corp., Docket No. KENT 86–51–D. (Issues include consideration of a motion to instruct the judge on remand.)

5. *Midwest Minerals, Inc.*, Docket No. CENT 89–67–M. (Issues include initial consideration of motion for remand.)

6. *Southern Ohio Coal Company*, Docket No. WEVA 89–124–R, etc. (Issues include consideration of a motion to strike.)

7. *Arnold Sharp;* v. *Big Elk Creek Coal Company*, Docket No. KENT 89–147–D. (Consideration of merits of a Petition for Interlocutory Review.)

8. *Joseph Delisio* v. *Mathies Coal Co.*, Docket No. PENN 89–8–D. (Consideration of motions seeking leave to file amicus curiae briefs.)

It was determined by a unanimous vote of Commissioners that this portion of the meeting be closed.

Any person attending the open portion of this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay 1–800–877–8339 for Toll Free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 90–9590 Filed 4–20–90; 1:25 pm]

BILLING CODE 6735–01–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., Tuesday, May 1, 1990.

PLACE: Hearing Room A, Interstate Commerce Commission 12th and Constitution Avenue NW., Washington, DC 20423

STATUS: The purpose of the conference is for the Commission to discuss among themselves, and to vote on, the agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED: As set forth below in the appendix.

CONTACT PERSON FOR MORE INFORMATION: A. Dennis Watson, Office of Government and Public Affairs, Telephone: (202) 275–7252.

Noreta R. McGee,

Secretary.

APPENDIX

Voting Conference Agenda

May 1, 1990

Docket No. AB–6 (Sub No. 314), Burlington Northern Railroad Company—Abandonment in Norman and Clay Counties, MN.

Docket No. 37626, Consolidated Papers, Inc., et al. v. Chicago and North Western Transportation, et al.

Docket No. 40200, Charges for Movement of Empty Cars, Buffalo & Pittsburg Railroad, Inc.

Docket No. 40220, Bessemer and Lake Erie Railroad Co.—Petition for Declaratory Order—Interchange Facilities and Trackage Rights.

Finance Docket No. 25103, Illinois Gulf Central Railroad—Acquisition—Gulf, Mobile & Ohio Railroad Co., Illinois Central Railroad Co.

Docket No. MC–C–30163, Motor Carrier Audit & Collection Co.—Petition for Declaratory Order—Recyclable Materials Within the Scope of 49 U.S.C. 10733.

Docket No. MC–C–30146, The May Department Stores Company and Volume Shoe Corporation—Petition for Declaratory Order—Transportation Within Single State of Merchandise Imported by Water.

Docket No. MC–1515 (Sub-No. 407), Greyhound Lines, Inc., Exit Petition—North Carolina.

[FR Doc. 90–9571 Filed 4–20–90; 11:23 am]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 23, 30, May 7, and 14, 1990.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 23

Thursday, April 26

2:00 p.m.
Briefing on Containment Performance Improvement Program (Other Than Mark I) (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, April 27

9:00 a.m.
Briefing on Evolutionary Light Water Reactor Certification Issues and Related Regulatory Requirements (Public Meeting)

Week of April 30—Tentative

Thursday, May 3

2:00 p.m.
Briefing on EEO Program (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 7—Tentative

Thursday, May 10

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 14—Tentative

Wednesday, May 16

2:00 p.m.
Briefing on Proposed Rule on License Renewal (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the Status of Meetings call (Recording)—(301) 492–0292

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: April 19, 1990.

Andrew L. Bates,

Office of the Secretary.

[FR Doc 90–9016 Filed 4–20–90; 2:38 pm]

BILLING CODE 6210–01–M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, and Friday, April 26–27, 1990.

TIME: 9:00 a.m. to 5:30 a.m.

PLACE: The United States Institute of Peace, 1550 M Street N.W. (ground floor, conference room), Washington D.C.

STATUS: Open session—Thursday 9:15 a.m. to 5:30 p.m.

Portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98–525).

AGENDA: (Tentative):

Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the thirty-ninth meeting of the Board. Consideration of grant application matters.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs Office, Telephone (202) 457–1700.

Dated: April 19, 1990.

Bernice J. Carney,

Director, Administrative Office, The United States Institute of Peace.

[FR Doc. 90–9638 Filed 4–24–90; 4:06 pm]

BILLING CODE 3155–01–M

Corrections

Federal Register
Vol. 55, No. 79
Tuesday, April 24, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1770

Accounting Requirements for REA Telephone Borrowers

Correction

In rule document 90-2388 beginning on page 3387 in the issue of Thursday, February 1, 1990, make the following correction:

§ 1770.15 [Corrected]

On page 3393, in § 1770.15, in the table, in the third column, in the sixth entry, under *Telecommunications Plant Under Construction—Long Term—Force Account*, at the end of the second line, "labor engineering, supervision" should read "labor, engineering, supervision".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018-AB37

Migratory Bird Permits

Correction

In rule document 89-26762 beginning on page 47524 in the issue of Wednesday, November 15, 1989, make the following correction:

§ 21.44 [Corrected]

In § 21.44, on page 47526, in the first line, "country" should read "county".

BILLING CODE 1505-01-D

federal register

Tuesday
April 24, 1990

Part II

Department of Justice

Bureau of Prisons

28 CFR Parts 549 and 552

Control, Custody, Care, Treatment and Instruction of Inmates Suicide Prevention Program; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 549 and 552

Control, Custody, Care, Treatment and Instruction of Inmates Suicide Prevention Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this document the Bureau of Prisons is amending its rule on the Suicide Prevention Program. This amendment clarifies the procedures to be followed upon the identification, referral and assessment of imminently suicidal inmates, and adds provisions regarding the role of the Program Coordinator, staff training, housing for suicidal inmates, custodial issues for Special Housing Unit status, transfer to other institutions, and analysis of suicides. The intended effect of this amendment is to provide for the safety of inmates.

DATES: Effective April 24, 1990; comments due by June 8, 1990.

ADDRESSES: Office of General Counsel, Bureau of Prisons, room 760, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is revising its rule on the Suicide Prevention Program. The revised rule incorporates procedures intended to help preserve the life of inmates. The revised rule is also being redesignated in order to clarify the administrative status of inmates under this program. A final rule on the Bureau's Suicide Prevention Program was published in the **Federal Register** June 23, 1982 (47 FR 27218). A summary of specific changes to that rule follows.

New § 552.40 consists of the first two sentences of former § 549.70. The remainder of former § 549.70 is incorporated into new § 552.42. New § 552.41 specifies that each Bureau of Prisons institution, other than medical centers, will implement a suicide prevention program which conforms to the procedures outlined in this rule; medical centers develop and submit for approval suicide prevention program procedures consistent with the specialized nature of the institutions and the intent of this rule. Section 552.43 covers procedures for the Suicide Prevention Program formerly contained in § 549.71. Paragraph (a) of § 552.43 specifies that all staff will be trained to recognize signs indicative of a potential suicide and the appropriate referral process. Similar provisions were contained in former paragraphs (a) and (g) of § 549.71. Paragraph (b) of § 552.43 specifies procedures for screening newly admitted inmates. All newly admitted inmates will be screened by a physician's assistant within twenty-four hours of admission to the institution for both obvious and subtle signs of potential for suicide. Psychology staff will conduct a second, more comprehensive appraisal within 14 days of an inmate's admission to institutions other than Metropolitan Correctional Centers, Federal Detention Centers or Federal Detention Units. Paragraph (c) of § 552.43 revises paragraph (b) of former § 549.71. As revised, paragraph (c) now specifies that during regular working hours staff shall immediately advise the Program Coordinator of any inmate who exhibits behavior indicative of suicide, and that in emergency situations or during non-routine working hours, the potentially suicidal individual will be placed on formal suicide watch pending evaluation by the Program Coordinator, at his or her earliest opportunity. The documentation requirements in former § 549.71(b) are now covered in new § 552.43(d). New § 552.43(d) incorporates and revises paragraphs (c), (d), (e) and (f) of former § 549.71. The introductory text of new paragraph (d) provides a more general and comprehensive description of clinical interventions than former § 549.71(c). Paragraph (d)(1) of new § 552.43 specifies the determination that an inmate does not appear to be imminently suicidal shall be documented in writing along with any treatment recommendations which are made. Paragraph (d)(2) of new § 552.43 specifies that inmates appearing to have an imminent potential for suicide will be placed on suicide watch in the institution's designated suicide prevention room, and that appropriate documentation is made. The provisions of former § 549.71(e) on maintenance pertinent to imminently suicidal inmates are incorporated into new § 552.43(d)(2), and the provisions pertinent to inmates not imminently suicidal are covered by the treatment recommendations cited in new § 552.43(d) introductory text and (d)(1). As revised, new § 552.43(d) clearly emphasizes the procedure to follow for imminently suicidal inmates (i.e., placing them on suicide watch), and still allows for a variety of clinical interventions for inmates who are determined to be not imminently suicidal. The provision in former § 549.71(f) to document all efforts made on behalf of the potentially suicidal inmate is included in the documentation required by new § 552.43(d)(2), which should also include a clear description of the resolution of the crisis.

New § 552.44 specifies where suicidal inmates will be housed, and clarifies the status of such inmates with regard to medical hospitalization. New § 552.45 designates the Program Coordinator as having responsibility for determining the specific conditions of the watch. New § 552.46 discusses suicide watches. Paragraph (a) specifies that individuals assigned to suicide watch will have verbal communication with, and constant observation of, the suicidal inmate at all times. Paragraph (b) allows the Warden the discretion to use inmates as companions to help monitor suicidal inmates. Such inmate companions shall receive performance pay for time spent monitoring a potentially suicidal inmate and shall receive training for this purpose. Former § 549.71(g) previously allowed for the use and training of such compensated inmate companions. New § 552.47 specifies the Suicide Prevention Program applies to inmates in Special Housing Unit status. New § 552.48 specifies that imminently suicidal inmates will not be transferred to another institution, except for referrals by the Program Coordinator to a Medical Center on an emergency basis. New § 552.49 requires the Program Coordinator to immediately notify the Regional Administrator, Psychology Services, in the event of an inmate suicide. This section further provides for an autopsy to be performed.

Because this amendment imposes no further restrictions on inmates and is being issued to help preserve the life of potentially suicidal inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and delay in effective date. The Bureau of Prisons is interested in receiving public comments on its rule, and is therefore publishing this document as an interim rule. Members of the public may submit comments concerning this interim rule by writing the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 549 and 552

Prisoners.

Dated: April 11, 1990.

J. Michael Quinlan,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter C of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

1. The authority citation for 28 CFR part 549 is revised to read as follows, and all other authority citations in the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§§ 549.70 and 549.71 [Redesignated as §§ 552.40–552.49]

2. In 28 CFR part 549, subpart F, consisting of §§ 549.70 through 549.71, is redesignated and revised as 28 CFR part 552, subpart E, consisting of §§ 552.40 through 552.49.

PART 552—CUSTODY

3. The authority citation for 28 CFR part 552 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In 28 CFR part 552, subpart E, consisting of §§ 552.40 through 552.49, is redesignated from 28 CFR part 549, subpart F, and revised to read as follows:

Subpart E—Suicide Prevention Program

Sec.

Subpart E—Suicide Prevention Program

§ 552.40 Purpose and scope.

The Bureau of Prisons provides guidelines for the management of potentially suicidal inmates. While suicides cannot be totally eliminated, the Bureau of Prisons is responsible for monitoring the health and welfare of individual inmates and for ensuring that procedures are pursued to help preserve life.

§ 552.41 Policy.

Each Bureau of Prisons institution, other than medical centers, will implement a suicide prevention program which conforms to the procedures outlined in this rule. Each Bureau of Prisons medical center is to develop specific written procedures, consistent with the specialized nature of the institution and the intent of this rule.

§ 552.42 Program coordinator.

Each Warden shall designate in writing a full-time staff member to serve as Program Coordinator for an institution Suicide Prevention Program. The Program Coordinator shall be responsible for managing the treatment of suicidal inmates and for ensuring that the institution's suicide prevention program conforms to the guidelines for training, identification, referral, and assessment/intervention outlined in this rule.

§ 552.43 Procedures.

(a) *Training.* The Program Coordinator will ensure that all staff will be trained (ordinarily by psychology services personnel) to recognize signs indicative of a potential suicide, the appropriate referral process, and suicide prevention techniques.

(b) *Identification.* All newly admitted inmates will be screened by a physician's assistant (PA) ordinarily within twenty-four hours of admission to the institution for both obvious and subtle signs of potential for suicide. Except for inmates confined at Metropolitan Correctional Centers, Federal Detention Centers or in Federal Detention Units, psychology staff will conduct a second, more comprehensive appraisal, ordinarily within 14 days of the inmate's admission to the institution.

(c) *Referral.* During regular working hours staff shall immediately advise the Program Coordinator of any inmate who exhibits behavior indicative of suicide potential. In emergency situations or during non-routine working hours, the potentially suicidal individual will be placed on formal suicide watch pending evaluation by the Program Coordinator or delegatee at his or her earliest opportunity.

(d) *Assessment/Intervention.* There are varying degrees of potential for suicidal and other deliberate self-injurious behavior which may necessitate a variety of clinical interventions other than placing an inmate on suicide watch. These recommendations might include heightened staff or inmate interaction, a room/cell change, greater observation, or referral for psychotropic medication.

(1) *Non-suicidal inmates.* If the Program Coordinator determines that the inmate does not appear imminently suicidal, he/she shall document in writing the basis for this conclusion and any treatment recommendations made. This documentation is placed in the inmate's medical, psychology, and central file.

(2) *Suicidal inmates.* If the Program Coordinator determines the individual to have an imminent potential for suicide, the inmate will be placed on suicide watch in the institution's designated suicide prevention room. The actions and findings of the Program Coordinator will be documented, with copies going to the central file, medical record, psychology file, and the Warden. The inmate on watch will ordinarily be seen by the Program Coordinator on at least a daily basis. Unit staff will have frequent contact with the inmate while he/she is on watch. Only the Program Coordinator will have the authority to remove an inmate from suicide watch. Termination of the watch will be documented with copies to the central file, medical record, psychology file, and the Warden. There should be a clear description of the resolution of the crisis and guidelines for follow-up care.

§ 552.44 Housing suicidal inmates.

Inmates on watch will be placed in the institution's designated suicide prevention room, a non-administrative detention/segregation cell ordinarily located in the health services area. Despite the cell's location, the inmate will not be admitted as an in-patient unless there are medical indications that would necessitate immediate hospitalization.

§ 552.45 Authority and responsibility.

The Program Coordinator will have responsibility for determining the specific conditions of the watch.

§ 552.46 Suicide watches.

(a) *Requirements for watches.* Individuals assigned to suicide watch will have verbal communication with, and CONSTANT observation of, the suicidal inmate at all times.

(b) *Inmate Companions.* Any institution, at the Warden's discretion, may utilize inmates as companions to help monitor suicidal inmates. If the Warden authorizes a companion

program, the Program Coordinator will be responsible for the selection, training, assignment, and removal of individual companions. These companions will receive at least semi-annual training in program procedures and purpose. Inmates selected as companions shall receive performance pay for time spent monitoring a potentially suicidal inmate. The authorization for the use of inmate companions is to be made in writing by the Warden on a case-by-case basis.

§ 552.47 Custodial issues.

The Program Coordinator will arrange for a potentially suicidal inmate to be removed from Special Housing Unit status prior to completion of his/her administrative detention or sanction and placed on suicide watch. Once the suicide crisis is over, the inmate will be expected to satisfy the administrative detention or Disciplinary Segregation sanction unless the Segregation Review Official finds the completion of the administrative detention or sanction no longer necessary and/or advisable.

§ 552.48 Transfer of inmates to other institutions.

The Program Coordinator will be responsible for making emergency referrals of suicidal inmates to the appropriate medical center. No inmate who is determined to be imminently suicidal will be transferred to another institution, except to a medical center on an emergency basis.

§ 552.49 Analysis of suicides.

If an inmate suicide does occur, the Program Coordinator will immediately notify the Regional Administrator, Psychology Services, who will arrange for a psychological reconstruction of the suicide to be completed by a psychologist from another institution.

[FR Doc. 9288 Filed 4-23-90; 8:45 am]

BILLING CODE 4410-05-M

federal register

Tuesday
April 24, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 135

Ground Proximity Warning Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 26202; Notice No. 90-14]

RIN 2120-AD29

Ground Proximity Warning Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to revise the operating rules for air taxi and commercial operators by requiring that all turbine-powered (rather than just turbojet) airplanes with ten or more seats be equipped with an approved ground proximity warning system. The proposed changes are needed because studies have shown that several controlled flight into terrain accidents involving turbo-propeller powered airplanes might have been avoided had the airplanes been equipped with a ground proximity warning system. This proposed rule is intended to reduce the risk of airplanes being flown into terrain with no apparent awareness by the crews that they are approaching the ground.

DATES: Comments must be received on or before July 23, 1990.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), room 915G, Docket No. 26202, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked Docket No. 26202. Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Akers, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9571.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26202." The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Beginning in the 1970's, a number of studies conducted by the National Transportation Safety Board (NTSB), the United Kingdom's Civil Aviation Authority, and independent researchers looked into accidents that were classified as "Controlled Flight Into Terrain" (CFIT). In CFIT-type accidents, an airplane under the control of a fully qualified and certificated crew is flown into terrain (or water or obstacles) with no apparent awareness on the part of the crew of an impending disaster. In general, studies have shown that a ground proximity warning system (GPWS) would be a useful warning device to prevent CFIT accidents. (For detailed information on the studies, see "Investigation of Controlled Flight Into Terrain (CFIT)", Department of Transportation, Transportation Systems Center, March 1989 (hereafter referred to as "DOT-TSC study"). A copy of this study has been placed in the Rules Docket.)

Section 121.360 (Amendment 121-114, published in December 1974, 39 FR 44439) required all part 121 and some part 135 certificate holders to install GPWS's on large turbine-powered airplanes. The GPWS requirements were further refined by amendments in 1975 and 1976. (See 40 FR 19638, 42183, 50707, 55313, and 41 FR 35070.) No requirements for small turbine-powered airplanes operating under part 135 existed until October 1978, when § 135.153 was adopted. This regulation prohibited part 135 certificate holders from operating turbojet airplanes with 10 or more seats unless the airplanes were equipped with either GPWS's that met specific TSO requirements or alternative ground proximity advisory systems approved by the Director, Flight Standards Service.

The term "GPWS," as used in this document, means a warning system that could meet TSO-C92b or subsequent TSO's issued for GPWS. This is the type of system that operates only when there is an imminent potential hazard. The terms "ground proximity advisory system" and "advisory system" are used to refer to the type of alternative system authorized under present § 135.153(b), and refers to systems that usually provide routine altitude callouts, whether or not there is any imminent danger.

In 1978, the requirement for installing GPWS's or alternative ground proximity advisory systems in small turbojet airplanes operating under part 135 was considered necessary because of the complexity, size, speed, and flight performance characteristics of these airplanes. GPWS's or alternative approved advisory systems were therefore considered an essential element in helping the pilots of these planes to regain altitude quickly and avoid what could have been a CFIT-type accident.

Installation of GPWS's or alternate approved advisory systems was not originally required on turbo-propeller powered (turboprop) airplanes because, at the time, it was believed that the performance characteristics of turboprop airplanes made them less susceptible to CFIT accidents. Turboprop airplanes have a greater ability to respond quickly in situations where altitude control is inadvertently neglected, as compared to turbojet airplanes.

A 1981 study found that the use of GPWS's contributed to the prevention of CFIT accidents. (R. Porter and J. Loomis, "An Investigation of Reports of Controlled Flight Toward Terrain (CFTT).") The study reviewed CFIT-type incident reports from 1976-1980 and found that GPWS's and Minimum Safe

Altitude Warning (MSAW) equipment were "the initial recovery factor in some 18 serious incidents and were apparently the sole warning in 6 reported instances which otherwise would most probably have ended in disaster."

In October 1986, the NTSB published a study investigating the causes of three commuter air carrier accidents. One element explored in the study was the use of ground proximity warning devices. The NTSB pointed out that between 1975 and 1978, after FAA had required GPWS's for large turbine-powered airplanes operated under part 121, CFIT accidents decreased by 75 percent for part 121 operations.

The NTSB stated that it was "convinced that each of these (three) accidents could have been prevented if the flightcrew had been alerted to their proximity to the ground in sufficient time to have initiated missed approach procedures." The study went on to say that although the number of turboprop airplanes used for commuter purposes was increasing, thereby affecting a larger number of passengers, there was no regulation requiring that these airplanes be equipped with ground proximity warning systems or devices. The NTSB therefore recommended the following:

> Amend 14 CFR 135.153 to require after a specified date the installation and use of ground proximity warning devices in all multiengine, turbine-powered fixed wing airplanes, certificated to carry 10 or more passengers.

In its report the NTSB stated that it "realizes that a full GPWS, such as those installed in large turbojet airplanes, may be prohibitively expensive to retrofit into part 135 type airplanes."

At the request of the FAA, an investigation into CFIT accidents involving turbine-powered airplanes operating under part 135 was conducted by the Department of Transportation-Transportation Systems Center [DOT-TSC]. The investigation, which was undertaken in response to the above NTSB recommendation, studied data from 41 CFIT accidents occurring between 1970 and 1988. Of the 41 accidents, complete accident investigation records were available for the 27 that occurred after 1977. These records showed that it was highly improbable that any of the pilots operating these airplanes received warning that impact was about to occur. Complete results of this investigation are contained in the DOT-TSC study.

Analysis of the accident investigation records reviewed in the DOT-TSC study support the following conclusions: (1) A GPWS warning would not have been activated in four of the accidents; (2) a GPWS warning would have been activated but with questionable recovery in five of the accidents; and (3) a GPWS warning might have been activated with likely or probable recovery in 18 of the accidents. Thus, 66 percent of these accidents might have been avoided if the airplanes had GPWS's.

Besides pointing out the potential effectiveness of GPWS's, the DOT-TSC investigation presented data on the types of airplanes involved in all 41 accidents studied. Thirty-five of these accidents involved turboprop airplanes and six involved turbojet airplanes.

The DOT-TSC study evaluated a ground proximity warning system that would meet TSO-C92b and also evaluated two alternative ground proximity advisory systems of the type that could be approved under the present rule. This study found that in certain situations each of these systems provided essentially functionally-equivalent protection. The study pointed out that the three systems provide very different approaches to providing altitude awareness to the flight crew. The advisory systems use automatic altitude callouts which will always activate when the aircraft descends below 1,000 feet above ground level (AGL). On the other hand, a GPWS is designed to do the following:

1. Alert or warn only when necessary.
2. Provide maximum warning time while minimizing unwanted alarms.
3. Use command-type warnings.

This system is the only one of the three that can be called a ground proximity warning system (GPWS) and the only one that can meet applicable minimum performance standards for obtaining TSO design approval. The other two systems are accurately referred to as ground proximity advisory systems.

The DOT-TSC study found that in the most critical operational situation (excessive closure rate with terrain) there were significant performance differences between the TSO-approved GPWS and the alternative ground proximity advisory systems.

The DOT-TSC study also compared recent cost data on the three systems analyzed and found them to be comparable in their unit costs. That is, a full TSO-approved ground proximity warning system is no longer significantly more costly than the alternative advisory systems ($20K for GPWS versus $15K to $19K for advisory systems). This fact is highly significant since as recently as 1986, the cost of a full TSO-approved GPWS for smaller turbo-propeller powered airplanes would have been prohibitively expensive as the NTSB noted in its recommendation.

In view of the above cited studies and investigations and the FAA's past policy to increase ground proximity warning requirements consistent with technological and economic feasibility, it is appropriate to require ground proximity warning systems for all turbine-powered airplanes with 10 or more seats operating under part 135. The number of turbine-powered airplanes having a passenger configuration of 10 seats or more in operation today, as compared to 1978, has increased significantly. The traveling public today expects the same level of safety when required to transfer from a large air carrier airplane to a smaller turboprop airplane for travel to and from hub airports.

The Proposed Rule

Section 135.153 would be amended by changing the term "turbojet" to "turbine-powered" airplanes. This would expand the types of airplanes required to have ground proximity warning systems. Thus, both turbojet and turbo-propeller powered airplanes having a passenger configuration, excluding any pilot seat, of 10 seats or more would be required to have an approved GPWS. Equipment manufactured under TSO-C92b or subsequent TSO's issued for GPWS are considered approved GPWS.

As proposed, this amendment to § 135.153 would end on the rule's effective date the current option to install an FAA-approved ground proximity advisory system on turbojet airplanes. Certificate holders operating under part 135 with turbine-powered airplanes currently lacking ground proximity warning systems would be required to equip these airplanes with GPWS's within two years after the effective date of the rule. Certificate holders that operate turbojet airplanes with advisory systems that were approved and installed in accordance with § 135.153(b) before the effective date of the rule would be required to replace those systems within four years after the effective date. The FAA believes that only a few airplanes would be affected by this retrofit requirement since far fewer turbojet airplanes with 10 or more passenger seats are in operation under part 135 than were anticipated when § 135.153 was adopted.

The provisions of existing § 135.153(f) are included in proposed § 135.153(b)(3) for editorial purposes.

The justification for requiring GPWS's (as opposed to alternative advisory systems) on turbine-powered airplanes that have no existing warning systems is that the advisory systems generally provide routine warnings (i.e., automatic altitude callouts), rather than warnings that are provided only upon violation of defined flight profiles. Routine warnings may be easily overlooked by the flight crew as they attend to other duties. This, coupled with findings of some of the CFIT-related studies that show a lack of crew adherence to standard cockpit procedures and the incidence of crew stress and fatigue, could reduce effectiveness of the alternative advisory systems. GPWS's provide warning signals that are clear, specific, and non-routine, thereby giving the crew a better chance of making readjustments and avoiding possible disaster.

In addition, the costs of GPWS's are in the same range as the alternative advisory systems, therefore imposing little additional burden in terms of cost outlay for new installations.

Regulatory Evaluation

This regulatory evaluation analyzes the benefits and costs of the proposal. A more detailed analysis has been placed in the docket.

The proposed regulation would amend part 135 by expanding the requirement for GPWS's, now applicable only to turbojet airplanes with 10 or more passenger seats, to also include turboprop airplanes of similar seating capacity. This amendment would also require that only GPWS's, and not ground proximity "advisory" systems, be installed on airplanes that currently have no such system. However, airplanes that have previously approved advisory systems that were installed before the effective date would need to upgrade or replace these systems with a GPWS within 4 years from the effective date of the final rule.

Costs

At this time, only one avionics manufacturer plans to produce a GPWS that will meet the current FAA Technical Standard Order (TSO) for use in multiengined, fixed-wing, turbine-powered aircraft operating under part 135. The manufacturer provided FAA with its anticipated unit costs, as well as specification information about the warning system. Costs included $12,000 for equipment, $600 for wiring, connectors, etc., and $2,000 for installation. Annual maintenance costs were estimated to be 5 percent of equipment costs, or about $6,000 over 10 years (see *Investigation of Controlled Flight Into Terrain (CFIT)*, Department of Transportation—Transportation Systems Center [DOT–TSC] March 1989).

In addition, the manufacturer provided cost data for suitable radio altimeters that must accompany the GPWS. The estimated cost per installation would be $7,000, reflecting a $5,000 cost for the radio altimeter and $2,000 for installation.

As of December 1987, 695 part 135 turboprop airplanes were reported in operation (*FAA Statistical Handbook of Aviation—Calendar Year 1987*, Department of Transportation, FAA). A small percentage of these airplanes may already be equipped with an approved GPWS. For the purposes of this evaluation, FAA assumes that all 695 of these airplanes would be required to comply with the proposed regulation and would need to be equipped with a GPWS. Costs for equipment, materials, and installation for the GPWS, as reported by the manufacturer, total $14,600. Thus, the total estimated costs to purchase and install GPWS's would be $10.1 million ($14,600×695). Approximately 4 percent of the 695 airplanes operating under part 135, such as those operating in air taxi service, do not have 10 or more seats, and thus would not be affected by the proposed rule (according to the *Census of U.S. Civil Aircraft—1985*, Department of Transportation, FAA). Therefore, estimated costs are overstated to a small degree.

Not all of the 695 turboprop airplanes operating under part 135 would need to install radio altimeters. The DOT–TSC study determined that 38.8 percent of the airplanes that would be affected by this proposal currently have satisfactory radio altimeters on board. Thus, FAA estimates that 425 airplanes would be required to install these devices. At $7,000 each, the total cost to purchase and install radio altimeters is nearly $3 million. The total fleet cost for radio altimeters and GPWS is $13.1 million ($3 million + $10.1 million). These costs would be incurred almost immediately after the rule becomes effective.

Maintenance costs were estimated to be $600 per year over the 10-year life of the warning system. The total estimated 10-year cost to the fleet for maintenance is $4.2 million (695 airplanes ×$600×10 years) which, when discounted at 10 percent annually over the 10-year life, is $2.7 million.

Each additional pound of weight added to part 135 turboprop aircraft is estimated to result in 8.55 gallons of annual fuel consumption to fly the additional weight. Because jet fuel currently costs $1.68 per gallon for part 135 commuters, the annual cost per pound of additional weight is about $14.36. The total additional weight per aircraft associated with the GPWS, altimeter, and wiring is estimated to be 4 pounds. Therefore, total annual weight penalty costs are estimated to be $57.44 and $39,921 per aircraft and fleet, respectively. Total discounted 10-year costs are expected to be $261.165.

Therefore, fleet costs of the proposed rule include $13.1 million in implementation costs, $2.7 million for maintenance costs, and $0.26 million in weight penalty costs, for a total of $16.06 million.

Benefits

Twenty-seven accidents occurred in the 10-year period between 1978 and 1987 in which NTSB accident investigations revealed that it was highly improbable that the flight crew had any prior awareness of an impending impact with terrain. None of the airplanes involved in these accidents were equipped with a GPWS, and only one was equipped with an advisory system. The March 1989 DOT–TSC study of CFITs scrutinized the circumstances of each of these accidents. The study determined that four of the accidents most likely would not have been prevented if a GPWS had been on board. In five other accidents the airplanes involved would have received a GPWS alert, but with questionable time provided for recovery, if such a system had been on board. The other 18 accidents involved airplanes that would have had a GPWS alert activated with sufficient time for recovery, if one had been in use at the time. The casualties in the 18 accidents that the study considered preventable with the use of a GPWS included 56 fatalities and 7 serious injuries.

The FAA assumes for the purpose of this analysis that similar casualties can be expected in the future if GPWS's are not installed on multiengined, fixed-wing, turboprop aircraft operating under part 135. For the purpose of quantifying benefits of this proposal, a minimum value of $1M is used to statistically represent a human life, and $59,000 is used to statistically represent a serious injury. In addition, the DOT–TSC study determined that the value of the average dollar loss for each of the 10 aircraft destroyed and the 6 aircraft substantially damaged was $550,000 and $180,000, respectively. Applying these values against the estimated potential losses provides an estimate of the total benefit of the proposal over a 10-year period. The savings in human casualties total $56.4 million (56×$1 million + 7×$59,000). The savings in destroyed

and substantially damaged airplanes total $6.6 million ($10 \times \$550{,}000 + 6 \times \$180{,}000$). Total benefits amount to $63 million, or $40.7 million when discounted at 10 percent over the 10-year period.

Comparison of Benefits and Costs

The potential benefits of this proposal ($40.7 million over 10 years) far exceed the estimated costs ($16.06 million over 10 years). Unfortunately, there is no way to know how many accidents and deaths will actually be prevented if this proposal is adopted. However, it is clear that if this proposed regulation succeeds in preventing only 40 percent of the accidents predicted in this analysis, it will prove to be cost-beneficial.

International Trade Impact

The proposal, if adopted, would have little or no impact on trade for U.S. firms doing business overseas or foreign firms doing business in the U.S. The proposal affects only part 135 airplanes of U.S. registry, and the expected additional annual operating cost of $2,311 (present value) per airplane ($16.06 million for 695 aircraft over a 10-year period) should not create an economic disadvantage to either domestic operators or foreign carriers operating in the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities."

The proposal would have an economic impact on entities regulated by part 135. The FAA's criteria for a "substantial number" is a number which is not less than 11 and which is more than one third of the small entities subject to the rule. For air carriers, a small entity has been defined as one who owns, but does not necessarily operate, nine aircraft or less. The FAA's criteria for a "significant impact" is at least $3,700 per year for an unscheduled carrier, and $51,800 or $97,700 per year for a scheduled carrier depending on whether or not the fleet operated includes small airplanes (60 or fewer seats).

A carrier qualifying as an unscheduled small entity with at least two airplanes would incur a significant economic impact because the annual cost of $4,622 for two airplanes exceeds the $3,700 criteria used by the FAA. Such carriers represent approximately 37 percent of all small entities subject to the rule. Therefore, as required by law, an initial regulatory flexibility analysis follows.

Initial Regulatory Flexibility Analysis

As required by section 603(b) and (c) of the Regulatory Flexibility Act, the following analysis deals with the proposed rule as it relates to small entities.

Why Agency Action Is Taken

The reasons for agency action are detailed in the preamble of the NPRM. Briefly, the proposal would improve safety by reducing controlled flight into terrain accidents involving turbo-propeller powered airplanes. The proposal addresses an NTSB recommendation and is supported by studies that suggest that installation of a ground proximity warning system would contribute to prevention of CFIT accidents.

Objective of and Legal Basis for the Rule

The objective of the proposal is to improve the operating safety of part 135 aircraft by preventing controlled flights into terrain. The objective is more thoroughly discussed in the preamble of the NPRM. The legal basis of the proposal is sections 313, 314, and 601 through 610 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430) and the Department of Transportation Act (49 U.S.C. 106(g)).

Description of the Small Entities Affected by the Rule

The small entities affected by the rule would be unscheduled carriers operating under part 135 of the Federal Aviation Regulations that have more than one aircraft, but less than nine. Such aircraft have 10 or more seats.

Compliance Requirement of the Proposed Rule

Compliance with the proposed rule would be mandatory for all operators of turbine-powered, multiengined, fixed-wing aircraft with 10 or more passenger seats that operate under part 135. Operators of turbojet aircraft that are currently using alternative warning systems approved by the FAA would be required to replace those systems within 4 years of the effective date of the rule.

Alternatives to the Proposal

As part of the rulemaking action, the FAA considered several alternative approaches to the problem addressed by this proposal.

Alternative One

Let the market decide. This alternative would allow the public to select an airline based on competitive factors including those of a safety nature. The airline would be free to choose whether it should install GPWS's as recommended. This is an alternative applicable to all safety regulations. In the view of the FAA, this alternative would not assure a safe U.S. air transportation system.

Alternative Two

Delay development of the proposal pending additional information which could be obtained during further government and industry reviews. This alternative is tentatively rejected. The current proposal is supported by adequate investigations and studies. Publication of the proposal in the **Federal Register** and solicitation of comments is the most effective method of developing a sound amendment.

Alternative Three

Reduce costs to the industry by reducing the safety requirements. Permit implementation of a warning system that has fewer than the five defined modes of protection provided in a "full-scale" GPWS. The FAA rejects this alternative because implementation of fewer than the full complement of five warning envelopes, as shown in the DOT–TSC study, would create only minimal cost savings. However, some of the benefits of the system would be lost.

Federalism Implications

The regulation proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

This proposal is significant under Department of Transportation Policies and Procedures (44 FR 11034, February 26, 1979) and, if adopted, the FAA certifies that it may have a significant negative economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The annual cost that would be imposed on part 135 operators to install a ground proximity warning system on turboprop airplanes would exceed $3,700 per year for unscheduled

air carriers. The FAA has determined that this notice involves a rulemaking action that is not a major rule under Executive Order 12291. An initial regulatory evaluation of the proposal, including an Initial Regulatory Flexibility Analysis and International Trade Impact Analysis has been placed in the docket. A copy may be obtained by contacting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 135

Ground proximity warning systems.

The Proposed Amendment

The Federal Aviation Administration proposes to amend part 135 of the Federal Aviation Regulations [14 CFR part 135] as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 135.153 is revised to read as follows:

§ 135.153 Ground proximity warning system.

(a) Except as provided in paragraph (b) of this section, after (a date 2 years after effective date of this amendment), no person may operate a turbine-powered airplane having a passenger seating configuration, excluding any pilot seat, of 10 seats or more, unless it is equipped with an approved ground proximity warning system.

(b) Any airplane equipped before (insert effective date) with an alternative system that conveys warnings of excessive closure rates with the terrain and any deviations below glide slope by visual and audible means may continue to be operated with that system until (insert date four years after effective date) provided that—

(1) The system must have been approved by the Administrator;

(2) The system must have a means of alerting the pilot when a malfunction occurs in the system; and

(3) Procedures must have been established by the certificate holder to ensure that the performance of the system can be appropriately monitored.

(c) For a system required by this section, the Airplane Flight Manual shall contain—

(1) Appropriate procedures for—

(i) The use of the equipment;

(ii) Proper flight crew action with respect to the equipment; and

(iii) Deactivation for planned abnormal and emergency conditions; and

(2) An outline of all input sources that must be operating.

(d) No person may deactivate a system required by this section except under procedures in the Airplane Flight Manual.

(e) Whenever a system required by this section is deactivated, an entry shall be made in the airplane maintenance record that includes the date and time of deactivation.

Issued in Washington, DC, on April 11, 1990.

Thomas E. McSweeny,

Acting Director, Aircraft Certification Service.

[FR Doc. 90-9322 Filed 4-23-90; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday,
April 24, 1990

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To The Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report three revised deferrals of budget authority now totalling $2,097,533,159.

The deferrals affect programs in Funds Appropriated to the President and the Departments of Defense and Health and Human Services. The details of the deferrals are contained in the attached report.

Dated: April 18, 1990.

George Bush.

THE WHITE HOUSE.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D90-1B	Economic support fund.....	2,088,909
	Department of Defense, Civil:	
D90-4A	Wildlife conservation.....	1,497
	Department of Health and Human Services:	
	Social Security Administration:	
	Limitation on administrative	
D90-5A	expenses (construction).....	7,127
	Total, deferrals.....	2,097,533

SUMMARY OF SPECIAL MESSAGES
FISCAL YEAR 1990
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Fourth special message:		
New items	—	—
Revisions to previous special messages	—	20,329
Effects of the fourth special message	—	20,329
Amounts from previous special messages	—	10,642,260*
TOTAL amount proposed to date in all special messages	—	10,662,589*

* On March 28, 1990, the Director of the Office of Management and Budget informed the Congressional Committees on Appropriations that the Administration no longer intends to withhold $2,193,850,000 in Department of Defense deferrals. These funds are currently being released.

Deferral No. D90-1B

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D90-1A transmitted to Congress on January 29, 1990.

This revision increases by $19,830,727 the previous deferral of $2,069,078,500 in the Economic support fund, resulting in a total deferral of $2,088,909,227. The increase results from more unobligated funds carried over from FY 1989 than previously anticipated.

Deferral No. 90-1B

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... * $ 3,226,132,500 (P.L. 101-167)
BUREAU: International Security Assistance	Other budgetary resources..... * 242,885,375
Appropriation title and symbol: Economic support fund 1/ 119/01037 1101037 11X1037 110/11037	Total budgetary resources..... * 3,469,017,875 Amount to be deferred: Part of year..... * $ 2,088,909,227 Entire year.....
OMB identification code: 11-1037-0-1-152	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other
Type of account or fund: [X] Annual [X] Multi-year: *September 30, 1990 September 30, 1991 (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11x1037	11-1037-0-1-152	* $ 20,830,727
Economic support fund.....	119/01037	11-1037-0-1-152	270,000,000
Economic support fund.....	110/11037	11-1037-0-1-152	1,798,078,500
			* 2,088,909,227

JUSTIFICATION: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ These accounts were the subject of a similar deferral in 1989 (D89-1A).

* Revised from previous report.

Deferral No. D90-4A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D90-4 transmitted to Congress on October 2, 1989.

This revision to a deferral of the Department of Defense - Civil, Wildlife conservation account increases the amount previously reported from $1,047,000 to $1,497,114. This increase of $450,114 results from the deferral of unanticipated actual balances carried over from FY 1989 and increased FY 1990 receipts.

Deferral No. 90-4A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Defense - Civil	New budget authority..... * $ 2,098,000 (16 U.S.C. 670f)
BUREAU: Wildlife Conservation Military Reservations 1/	Other budgetary resources..... * $ 1,871,735
Appropriation title and symbol: Wildlife Conservation, Army 21X5095 Wildlife Conservation, Navy 17X5095 Wildlife Conservation, Air Force 57X5095	Total budgetary resources..... * $ 3,969,735
	Amount to be deferred: Part of year..... _____ Entire year..... * $ 1,497,114
OMB identification code: 97-5095-0-2-303	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Wildlife Conservation, Army.....	21X5095	21-5095-0-2-303	*$ 986,465
Wildlife Conservation, Navy.....	17X5095	17-5095-0-2-303	* 172,168
Wildlife Conservation, Air Force....	57X5095	57-5095-0-2-303	* 338,481
			* 1,497,114

JUSTIFICATION: These are permanent appropriations of receipts generated from hunting and fishing fees in accordance with the purpose of the law -- to carry out a program of natural resource conservation. These programs are carried out through cooperative plans agreed upon by the local representatives of the Secretary of Defense, the Secretary of the Interior, and the appropriate agency of the State in which the reservation is located. These funds are being deferred (1) until, pursuant to the authorizing legislation (16 U.S.C. 670f(a)), installations have accumulated funds over a period of time sufficient to fund a major

1/ These accounts were the subject of a similar deferral in 1989 (D89-5A).

* Revised from previous report.

D90-4A

project; (2) until individual installations have designed and obtained approval for the project; and (3) because there is a seasonal relationship between the collection of fees and their subsequent expenditure since most of the fees are collected during the winter and spring months. Funds collected in a prior year are deferred in order to be available to finance the program during summer and fall months or in subsequent years. Additional amounts will be apportioned when projects are identified and project approval is obtained. This deferral is made under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

Deferral No. D90-5A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D90-5 transmitted to Congress on October 2, 1989.

This revision to a deferral of the Department of Health and Human Services, Social Security Administration's Limitation on Administrative Expenses (Construction) account increases the amount previously reported from $7,078,261 to $7,126,818. This increase of $48,557 results from more unobligated funds carried over from FY 1989 than previously anticipated.

Deferral No. 90-5A

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	New budget authority..... _____
BUREAU: Social Security Administration	Other budgetary resources..... * $ 7,505,018
Appropriation title and symbol: Limitation on administrative expenses (construction) 1/ 75X8704	Total budgetary resources..... * $ 7,505,018
	Amount to be deferred: Part of year..... _____ Entire year..... * $ 7,126,818
OMB identification code: 20-8007-0-6-651	Legal authority (in addition to sec. 1013): [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	Type of budget authority: [X] Appropriation [ ] Contract authority [ ] Other

JUSTIFICATION: This account provides funding for construction and renovation of the Social Security Administration's (SSA) headquarters and field office replacement projects. It has been determined that obligation authority in the amount of this deferral is not needed at the present time. Some additional obligations will occur in fiscal year 1991 for roof repair and replacement. Should new requirements arise, subsequent apportionments will reduce this deferral. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1989 (D89-7A).

* Revised from previous report.

[FR Doc. 90-9452 Filed 4-23-90; 8:45 am]
BILLING CODE 3110-01-C

federal register

Tuesday
April 24, 1990

Part V

Environmental Protection Agency

40 CFR Part 721
Significant New Uses of Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPTS-50575; FRL-3658-5]
RIN 2070-AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating significant new use rules (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for several chemical substances which were the subject of premanufacture notices (PMNs), and are now subject to TSCA section 5(e) consent orders issued by EPA. Today's action requires certain persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing activity designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and, if necessary, to prohibit or limit that activity before it occurs. EPA is promulgating these SNURs using direct final procedures.

EFFECTIVE DATE: The effective date of this rule is June 25, 1990.

Comment. If EPA receives notice before May 24, 1990 that someone wishes to submit adverse or critical comments on EPA's action in establishing a SNUR for one or more of the chemical substances subject to this rule, EPA will withdraw the SNUR for each substance for which the notice of intent to comment is received, and will issue a proposed SNUR providing a 30-day period for public comment.

ADDRESSES: Each comment or notice of intent to submit adverse or critical comments must bear the docket control number [OPTS-50575] and the specific CFR section number for the substance being addressed. Since some comments may contain confidential business information (CBI), all comments should be sent in triplicate to: TSCA Document Receipt Office (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. E-105, 401 M St., SW., Washington, DC 20460, Attn: Significant New Use Rules.

Nonconfidential versions of comments on this rule will be placed in the rulemaking record and will be available for public inspection. Unit X of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: This rule describes significant new uses and recordkeeping requirements for certain persons who intend to manufacture, import, or process certain chemical substances designated in the rule. Each of the following substances designated in today's rule was the subject of a PMN and a TSCA section 5(e) consent order issued by EPA. The substances are identified by generic chemical names because the specific names have been claimed as CBI (see Unit VII).

PMN Number	Chemical Name
P-89-448	(generic) Alkanepolyol phosphate ester
P-89-650	(generic) Substituted ethylene diamine, methyl sulfate quaternized
P-89-653	(generic) Adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid
P-89-703, P-89-755, and P-89-756	(generic) Reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid

This is the first rule EPA has issued using the expedited procedures and standard significant new use designations established in EPA's recent amendments to 40 CFR part 721. (See 54 FR 31308, July 27, 1989.) The preamble to this rule explains in detail the background and rationale supporting the use of the new expedited process. Where appropriate, future rules issued using the expedited process will contain an abbreviated version of this background information but will cross-reference the more complete explanation in the preamble of this rule.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 720.10.

II. Objectives and Rationale for Expedited SNUR Process

A. PMN Review and Use of Section 5(e) Orders

A limited amount of toxicity data is typically submitted with PMNs. Thus EPA bases its review of new substances primarily on structure-activity relationships (SAR). During PMN review, EPA may determine that "the information available* * *is insufficient to permit a reasoned evaluation of the health and environmental effects" of the new chemical substance that is the subject of the PMN. At the same time, EPA may determine, under section 5(e)(1)(A)(ii)(I), based on SAR analysis that activities involving the new substance "may present an unreasonable risk of injury to health or the environment." When EPA makes these two findings, it acts under section 5(e) to regulate the activities involving the new substance which contribute to the potential risk.

In most such circumstances, EPA believes that it is appropriate to negotiate an order (known as a "consent order") under section 5(e) with the PMN submitter to control human exposure and/or environmental releases until test data or other information sufficient to assess adequately the potential hazard become available. Section 5(e) consent orders have specified a variety of control measures, including protective equipment, use limitations, process restrictions, labeling requirements, and limits on environmental release. Some recent consent orders have included testing requirements that are triggered when specified levels of production volume or other indices of increased exposure are reached; under these orders, the submitter may not exceed the production volume limitation or other restriction imposed by EPA until test data specified by EPA have been submitted to and reviewed by EPA.

In other instances, during PMN review EPA may determine under section 5(e)(1)(A)(ii)(II) that a new substance will be produced in substantial quantities and "may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance," and that the available information is insufficient to determine the effects of the substance.

Consent orders issued to address concerns under section 5(e)(1)(A)(ii)(II) may include recordkeeping provisions and production volume limits.

B. Use of SNURS as a Follow-Up Tool for Substances Subject to Section 5(e) Consent Orders

Section 5(e) orders apply only to PMN submitters. When a PMN submitter commences commercial manufacture of the substance and submits a Notice of Commencement of Manufacture to EPA, EPA adds the substance to the TSCA Chemical Substance Inventory maintained pursuant to section 8(b) of TSCA. When a substance is listed on the Inventory, it is no longer a "new chemical substance" for which a PMN would be required under section 5(a)(1)(A). Thus, under section 5(e) alone other persons would be able to manufacture, import, or process the substance without EPA review and without the restrictions imposed on the PMN submitter by the section 5(e) order.

EPA uses its SNUR authority to extend limitations in section 5(e) orders to other manufacturers, importers, and processors. This ensures that the original PMN submitters and subsequent manufacturers, importers, and processors are treated in an essentially equivalent manner. These SNURs are framed so that non-compliance with the control measures or other restrictions in the section 5(e) consent orders is defined as a "significant new use." Thus, other manufacturers, importers, and processors of the substances must either observe the SNUR restrictions or submit a significant new use notice to EPA at least 90 days before initiating activities that deviate from these restrictions. After receiving and reviewing such a notice, EPA has the option of either permitting the new use or acting under section 5(e) or (f) to regulate the new submitter's activities.

In addition to assuring that all manufacturers, importers, and processors are subject to similar reporting requirements and restrictions, SNURs for these substances have the following objectives: That EPA will receive notice of any company's intent to manufacture, import, or process a chemical substance listed on the TSCA Inventory for a significant new use before that activity begins; that EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use; and that, when necessary to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs.

C. Substances That May Raise Concerns But Are Not Regulated Under Section 5(e) –

EPA also reviews some new substances that do not warrant action under section 5(e) but merit other follow-up monitoring and evaluation. On the basis of test data or structure-activity relationships analysis, EPA may identify potential health or environmental effects that could create a basis for concern if, because of changes in use and related activities, the substance's exposure or release potential later changes or increases beyond that described in the PMN.

In most such cases, EPA believes it is appropriate to use SNUR authority to monitor the commercial development of these substances so that EPA can be apprised of significant increases in exposure potential, which may warrant control measures or testing.

D. Rationale for Significant New Use Designations

To determine what constitutes significant new uses, EPA considers relevant information about the toxicity of the substance, likely exposures associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA. EPA designates the significant new uses of each substance based on these considerations.

In cases where significant new use designations are based on provisions in the section 5(e) order, EPA has already made a determination either under section 5(e)(1)(A)(ii)(I) (i.e., that activities involving the substance may present an unreasonable risk of injury to health or the environment), or under section 5(e)(1)(A)(ii)(II) (i.e., that the substance may be produced in substantial quantities and may enter the environment in substantial quantities or there may be significant or substantial human exposure). While such a finding is not necessary to promulgate a SNUR, it strongly supports a determination that the uses of the substance designated in the rule would be significant new uses of the substance. In this and future SNURs, for each substance subject to a section 5(e) order, EPA will specify the findings that served as the basis of the order.

For substances not subject to a section 5(e) order or when EPA believes that SNUR requirements should include provisions which did not appear in a section 5(e) order, the additional provisions will conform to the criteria in 40 CFR 721.170, and the basis for these additional provisions will be explained.

E. Conversion of Section 5(e) Orders Into SNURS

The standard significant new use designations in subparts B and C of 40 CFR part 721 are designed to be consistent with standard provisions for section 5(e) consent orders. Because section 5(e) orders are framed to apply only to PMN submitters, however, minor wording changes may be needed to convert the orders' provisions into generally applicable requirements. Under § 721.160(b), EPA may make such wording changes provided that they do not depart from the section 5(e) order's substantive requirements. All of the SNURs in today's rule are based on recently issued section 5(e) orders, and only minor wording changes are necessary to convert the requirements into SNURs.

Some earlier section 5(e) orders contain provisions that require major wording changes to be converted into SNURs. Where a particular requirement in a section 5(e) order is worded so differently from the corresponding SNUR provision that the basis for selecting the SNUR provision would not otherwise be evident, EPA will provide an explanation for its choice of SNUR provisions.

III. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and conditions of advance compliance for uses occurring before the effective date of the final rule. See 53 FR 28358 (July 27, 1988).

EPA has recently amended 40 CFR part 721 by establishing new subparts B, C, and D. See 54 FR 31306 (July 27, 1989). Subpart B establishes standard significant new use designations. Subpart C establishes recordkeeping requirements. Each standard significant new use and recordkeeping requirement will apply to a specific substance only if it is cited in the SNUR for that substance. Subpart D contains expedited procedures for establishing significant new use requirements for certain new substances that are regulated under a section 5(e) consent order. Subpart D also contains criteria to determine whether uses not identified in the PMN of non-section 5(e) substances will be considered candidates for a SNUR under expedited procedures. SNURS for specific substances are contained in subpart E.

Rules on user fees appear at 40 CFR part 700.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the rules in 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The rules that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements which are codified at 19 CFR 12.118 through 12.127 and 127.28 and must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

IV. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for the following chemical substances under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for each substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if applicable), basis for the action taken by EPA in the section 5(e) consent order for the substance (including the statutory citation and specific finding), and the CFR citation assigned in the regulatory text section of this rule. The specific uses which are designated as significant new uses are cited in the regulatory text section of the rule by reference to 40 CFR part 721 subpart B where the significant new uses are described in detail. Where the underlying section 5(e) order prohibits the PMN submitter from exceeding a specified production limit without performing specific tests to determine the health or environmental effects of a substance, the tests are described in this Unit. As explained further in Unit VI, the SNUR for such substances contains the same production limit, and exceeding the production limit is defined as a significant new use. Persons who intend to exceed the production limit must notify the Agency by submitting a significant new use notice at least 90 days in advance. In addition, this unit describes tests that are recommended by EPA to provide sufficient information to evaluate the substance, but for which no production limit has been established in the section 5(e) order. Descriptions of recommended tests are provided for informational purposes.

Each of these SNURs regulates a chemical substance subject to a section 5(e) order where the finding under TSCA is based solely on substantial production volume and substantial human or environmental exposure. In each of these cases, there was limited or no toxicity data available for the PMN substance, a potentially substantial production volume, and a potentially substantial human or environmental exposure. In such cases, EPA regulates new chemicals under section 5(e) by requiring certain toxicity tests. For instance chemicals with potentially substantial releases to surface waters would be subject to toxicity testing of aquatic organisms and chemicals with potentially substantial human exposures would be subject to health effects testing for mutagenicity, acute effects, and subchronic effects.

Each of these SNURs involves information which has been claimed as CBI. When a generic chemical name appears in this Unit, the specific name is claimed as CBI. In addition, each of the SNURs identified in this Unit involves a production limit as a significant new use. Because the production volume limit is contained in the section 5(e) order and has been claimed as CBI, the regulatory text incorporates the production volume by reference to the section 5(e) order. The procedures for determining whether a specific substance and/or a specific significant new use which are CBI are covered by a specific SNUR are described in Unit VII.

PMN Number P-89-448

Chemical name: (generic) Alkanepolyol phosphate ester.
CAS number: Not applicable.
Effective date of section 5(e) consent order: October 12, 1989.
Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of a mouse micronucleus assay (40 CFR 798.5395) and a 28-day repeated dose oral study in rats (OECD Guideline No. 407), with the following modifications: (a) for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.288.

PMN Number P-89-650

Chemical name: (generic) Substituted ethylene diamine, methyl sulfate quaternized.
CAS number: Not applicable.
Effective date of section 5(e) consent order: October 23, 1989.
Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be substantial environmental releases and significant or substantial human exposure.
Recommended testing: EPA has determined that the results of an acute algal study (40 CFR 797.1050), acute daphnid study (40 CFR 797.1300), and acute fish study (40 CFR 797.1400) would help characterize possible effects of the substance. The PMN submitter has agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.1082.

PMN Number P-89-653

Chemical name: (generic) Adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid.
CAS number: Not applicable.
Effective date of section 5(e) consent order: October 31, 1989.
Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that this substance is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of 28-day oral (OECD 407), acute oral (40 CFR 798.1175), Ames assay (40 CFR 798.5265), and mouse micronucleus (40 CFR 798.5395) studies would help characterize possible effects of the substance. The PMN submitter has

agreed not to exceed the production volume limit without performing these tests.
CFR citation: 40 CFR 721.266.

PMN Numbers P-89-703, P-89-755, and P-89-756

Chemical name: (generic) Reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid.
CAS numbers: Not applicable.
Effective date of section 5(e) consent order: October 12, 1989.
Basis for section 5(e) order: The Order was issued under section 5(e)(1)(A)(i) and (ii)(II) of TSCA based on a finding that each of these substances is expected to be produced in substantial quantities and there may be significant or substantial human exposure.
Recommended testing: EPA has determined that the results of a 28-day repeated dose oral study in rats (OECD Guideline No. 407), with the following modifications: (a) for all test doses, a neurotoxicity functional observational battery (40 CFR 798.6050), and (b) for the highest test dose group only, histopathologic examination extended to include the testes/ovaries and lungs, plus neuropathology (40 CFR 798.6400), and a one-species oral developmental toxicity test (40 CFR 798.4900) for each of these three substances would help characterize their possible effects. The PMN submitter has agreed not to exceed the production volume limits without performing these tests.
CFR citation: 40 CFR 721.295.

V. Direct Final Rule Procedure

EPA is issuing today's SNURs as direct final rules, as described in 40 CFR 721.160(c)(3) and 721.170(d)(4). This approach reduces the time, relative to notice and comment rulemaking, during which a person may legally engage in a significant new use before the SNUR effective date and also conserves EPA resources while providing an adequate opportunity for public comment. For further information on this procedure, refer to the preamble to EPA's final rule amending part 721 (54 FR 31298, July 27, 1989).

Direct final SNURS will go into effect 60 days after the date of publication in the **Federal Register**, unless EPA receives a written notice within 30 days after the date of publication that someone wishes to make adverse or critical comments on a specific SNUR. If EPA receives such a notice, EPA will issue a notice to withdraw the direct final SNUR(s) for the specific substance(s) to which the adverse or critical comments apply. Any person who submits a notice of intent to submit adverse or critical comments must identify the substance and the new use to which it applies. EPA will not withdraw a SNUR for a substance not identified in a notice. If EPA receives such a notice, EPA will then propose a SNUR for the specific substance(s) with a 30-day comment period.

VI. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require persons to develop any particular test data before submitting a SNUR notice. Persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, EPA suggests potential SNUR notice submitters consider conducting tests that would permit a reasoned evaluation of the potential risks posed by a particular substance when utilized for an intended use.

EPA has established production limits in the section 5(e) consent orders for the substances that are subject to this rule. Under the consent orders, the production limit cannot be exceeded unless the PMN submitters first submit the results of tests that would permit a reasoned evaluation of the potential risks posed by these substances. Each such order contains detailed procedures for dealing with situations where the resulting data are invalid or equivocal, or show that the substance will present an unreasonable risk of injury under the exposure limitations in the order. SNURs contain the same production limits as the consent orders; exceeding these production limits is defined as a significant new use.

Although SNURs in today's rule contain the same production limits established in the section 5(e) consent orders, the rule does not set out requirements for specific tests or protocols. A listing of the tests specified in the section 5(e) order for each substance subject to today's rule is included in Unit IV. The studies specified in the section 5(e) order may not be the only means of addressing the potential risks of the substance. However, SNUR notices submitted for significant new uses without any test data may increase the likelihood that EPA will take action under section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter.

EPA believes it is likely that in most cases the PMN submitter will conduct the tests identified in the section 5(e) order. Accordingly, before beginning to conduct a study, a person subject to the SNUR should contact EPA to determine whether the study has already been produced. EPA encourages persons to consult with EPA before selecting a protocol for testing a substance. As part of this pre-notice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed according to TSCA good laboratory practice standards at 40 CFR part 792. Failure to do so may lead EPA to find such data to be insufficient to evaluate reasonably the health or environmental effects of the substance.

SNUR notice submitters should be aware that EPA will be better able to evaluate SNUR notices which provide detailed information on: (1) Human exposure and environmental release that may result from the significant new use of the chemical substances; (2) potential benefits of the substances; and (3) information on risks posed by the substances compared to risks posed by potential substitutes.

VII. Determining When a Substance or Use Is Designated in the Rule

In some instances, EPA establishes a significant new use set at production volumes which have been claimed as CBI. Other information, including the specific chemical name of the substance, may also be claimed CBI. EPA has decided it is appropriate to keep this information confidential to protect the interest of the original PMN submitters.

EPA will reveal whether a specific chemical substance is subject to one of these SNURs only to a manufacturer or importer who has shown a *bona fide* intent to manufacture or import the substance. To establish a *bona fide* intent, the person must submit the information required under 40 CFR 721.11(b). EPA will make a determination as to whether the person has established a *bona fide* intent to manufacture or import the substance. If the person has established a *bona fide* intent, EPA will inform the person whether the chemical substance is included in the TSCA Inventory and subject to a specific SNUR.

Each of these SNURs designates exceeding a specific aggregate production volume as the significant new use by reference to 40 CFR 721.80(q). Section 721.80(q) is used when the specific volume is identified in the section 5(e) consent order but has been claimed as CBI. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in 40 CFR 721.575(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance

subject to a SNUR is CBI. This procedure is incorporated by reference into each of these SNURs.

Under the procedure incorporated from § 721.575(b)(1), a manufacturer or importer (processors are not affected by the production volume significant new use unless they are also manufacturing or importing the substance) must show that it has a *bona fide* intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. In the case of these SNURs, the use would be the specific aggregate manufacturing and import volume intended by the person. If EPA concludes that the person has shown a *bona fide* intent to manufacture or import the substance, EPA will tell the person whether the production volume identified in the *bona fide* submission would be a significant new use under the rule. Since the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in § 721.575(b)(1) with that under § 721.11 into a single step.

If a manufacturer or importer is told that the production volume identified in the *bona fide* submission would not be a significant new use, i.e. it is below the level that would be a significant new use, that person can manufacturer or import the substance as long as the aggregate amount does not exceed that identified in the *bona fide* submission to EPA. If the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use. EPA is considering whether to adopt a special procedure for use when CBI production are designated as significant new uses. Under that procedure, if a person showed a *bona fide* intent to manufacture or import the substance, under the procedure described in § 721.11, the person would automatically be told any production volume that would be a significant new use. Thus the person would not have to make multiple *bona fide* submissions to EPA for the same substance to remain in compliance with the SNUR, as could be the case under the procedures in § 721.575(b)(1).

VIII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. In those cases where a section 5(e) order has been issued, the notice submitter is prohibited by the section 5(e) order from undertaking activities which EPA is designating as a significant new use. If a Notice of Commencement of Manufacture (NOC) has not yet been submitted to EPA for the substance and the substance has not yet been added to the TSCA Chemical Inventory, no other person may commence such activities without first submitting a PMN to EPA. Therefore, EPA has concluded that in cases where EPA has not received a NOC, the uses designated in the SNUR are not ongoing. Those who submitted the PMNs covered by this rule have not submitted NOCs for these substances.

However, EPA recognizes that if a substance identified in a SNUR is added to the Inventory prior to the effective date of the rule, the substance may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule.

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. If the uses which had commenced between the date of publication and the effective date were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements.

Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow such persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance in 40 CFR 721.45(h), the person will be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

IX. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the public record for this rule.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50575). The record includes information considered by EPA in developing this rule.

A public version of this record containing nonconfidential materials is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, located at Rm. NE–G004, 401 M St., SW., Washington, DC.

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule will not be a "major" rule because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,500 to $11,000, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such

factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule will likely be small businesses. However, EPA expects to receive few SNUR notices for the substances. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: April 13, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding new § 721.266 to subpart E to read as follows:

§ 721.266 Adipic acid, polymer with 1,4-cyclohexane-dimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as adipic acid, polymer with 1,4 - cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid (PMN P–89–653) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Uses as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

3. By adding new § 721.288 to subpart E to read as follows:

§ 721.288 Alkanepolyol phosphate ester (generic name).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkanepolyol phosphate ester (P–89–448) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Uses as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

4. By adding new § 721.295 to subpart E to read as follows:

§ 721.295 Reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid (generic name).

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substances identified generically as reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid (PMNs P–89–703, P–89–755, and P–89–756) are subject to reporting under this section for significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Uses as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of these substances: Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

5. By adding new § 721.1082 to subpart E to read as follows:

§ 721.1082 Substituted ethylene diamine, methyl sulfate quaternized (generic name).

(a) *Chemical substance and significant new uses subject to*

reporting. (1) The chemical substance identified generically as ethylene diamine, methyl sulfate quaternized (P–89–650) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Uses as specified in § 721.80(q).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance: Recordkeeping requirements specified in § 721.125(a), (b), (c), and (i).

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.575(b)(1) apply to this section.

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

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Tuesday
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Part VI

Department of Education

34 CFR Part 86

Drug-Free Schools and Campuses and Suggested Date for Submitting Drug Prevention Program Certification; Proposed Rule and Notice

DEPARTMENT OF EDUCATION

34 CFR Part 86

RIN 1810-AA54

Drug-Free Schools and Campuses

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug-Free Schools and Communities Act Amendments of 1989, Public Law 101-226, requires that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education (IHE), State educational agency (SEA), or local educational agency (LEA) must certify that it has adopted and implemented a program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees. The purpose of this proposed rule is to implement these statutory requirements. The proposed rule specifies the content of the drug prevention program to be adopted and implemented; the nature of the certification requirements; the responses and sanctions to be applied for failure to comply with the requirements of this part; and the appeal process.

DATES: Comments must be received on or before June 8, 1990.

ADDRESSES: All comments concerning these proposed regulations should be addressed to the Drug-Free Schools and Campuses Task Force, Office of the Secretary, U.S. Department of Education, 400 Maryland Avenue SW. (FOB-6), room 4126, Washington, DC 20202-0499.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Drug-Free Schools and Campuses Task Force, U.S. Department of Education, 400 Maryland Avenue SW. (FOB-6), room 4126, Washington, DC 20202-0499.

SUPPLEMENTARY INFORMATION:

Background

President Bush's National Drug Control Strategy issued in September 1989 proposed that the Congress pass legislation to require schools, colleges, and universities to implement and enforce firm drug prevention programs and policies as a condition of eligibility to receive Federal financial assistance. On December 12, 1989, the President signed the Drug-Free Schools and Communities Act Amendments of 1989 (Amendments), Public Law 101-226. section 22 of the Amendments amends provisions of the Drug-Free Schools and Communities Act of 1986 and the Higher Education Act of 1965 to include these requirements.

IHEs, SEAs, and LEAs have broad discretion concerning the content of their drug prevention programs as long as the programs the minimum standards in the legislation and regulations.

However, experience has shown that the most effective programs to prevent the illegal use of drugs and alcohol and to keep drugs out of schools, campuses, and neighborhoods are those that are developed, supported, and implemented by all elements of the community, including law enforcement officials and parents.

Summary of Proposed Regulations

The following paragraphs summarize the provisions of the proposed regulations. To assist parties who wish to submit comments on the proposed regulations, the summary indicates the provisions that are statutory, and therefore cannot be modified by the Secretary, and those that are regulatory, and therefore may be modified in light of public comment.

Subpart A—General

Subpart A of the proposed regulations implements the statutory requirement in section 22 of the Amendments that an IHE, SEA, or LEA provide a written certification that it has adopted and implemented a program to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by its students and employees on school premises or as part of any of its activities, as more fully described in subparts B and C of the proposed regulations. The certification forms that the Secretary intends to use are attached as appendices to this NPRM, as are questions and answers concerning the statute and these regulations.

Section 22 of the Amendments requires IHEs, SEAs, and LEAs to submit the required certifications to remain eligible to receive any Federal financial assistance after October 1, 1990. The Federal financial assistance in question is that provided by any Federal department or agency; it is not confined to financial assistance provided by the Department of Education under the programs that it administers.

IHEs, SEAs, and LEAs would be required to submit the certification only once. The Amendments require IHEs and SEAs to submit their drug prevention program certifications to the Secretary. Under the statute, LEAs are required to submit their certifications to the SEA.

Since the statute makes SEAs responsible for administering LEA certifications, the proposed rules would require the SEA to notify LEAs of their responsibilities under the law and regulations, and develop a certification form and a schedule for submission of the certifications. An SEA would also be required to submit to the Secretary a list of LEAs that had not submitted certifications and to update that list in a timely manner as needed.

Under the statute, IHEs, SEAs, and LEAs that have not submitted certifications by the October 1, 1990 effective date, and that have not received extensions under the provisions proposed in § 86.4, will immediately become ineligible to receive Federal funds or any other form of Federal financial assistance under any Federal program. The effect of loss of eligibility to receive Federal financial assistance would be governed by the applicable program statute and regulations.

The Secretary has established in a notice published in this issue of the **Federal Register** a suggested date of September 4, 1990 for submission of certifications by IHEs and SEAs in order to ensure that the receipt of funds or other Federal financial assistance by these entities is not interrupted. An SEA may establish a deadline prior to October 1, 1990 for submission of certifications by LEAs.

Under the statute, the Secretary is authorized to grant an extension of time until not later than April 1, 1991 for an IHE, SEA, or LEA to submit the required certification. IHEs, SEAs, and LEAs should note that the granting of such requests is not automatic and the Secretary anticipates granting very few requests for extensions. The proposed regulations include procedures for requesting extensions and specify the information that would have to be included in a justification submitted by the IHE, SEA, or LEA requesting an extension. The proposed regulations are designed to ensure that the Secretary has adequate information to decide whether an institution or agency can justify an extension. The Secretary has established in the notice published in this issue of the **Federal Register** a deadline of August 1, 1990 for submission of requests for extensions.

Subpart B—Institutions of Higher Education

Subpart B of the proposed regulations implements the statutory requirements that govern the nature of the drug

prevention program for students and employees that an IHE must adopt and implement, the Secretary's review of an IHE drug prevention program, and the information that the IHE must make available to the Secretary and the public.

As set forth in the statute, the IHE's program is required to provide at a minimum—

(a) An annual distribution, in writing, to each student (regardless of the length of the student's program of study) and employee of—

- Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;
- A description of applicable legal sanctions under local, State, or Federal law;
- A description of health risks associated with the use of illicit drugs and the abuse of alcohol;
- A description of available drug or alcohol counseling, treatment, or rehabilitation or re-entry programs;
- A clear statement of the disciplinary sanctions that the IHE will impose on students and employees (as more fully set forth in the proposed regulations); and

(b) A biennial review by the IHE of its program to determine its effectiveness, implement needed changes, and ensure that disciplinary sanctions are consistently enforced.

The statute requires a periodic review of a representative sample of IHE programs. Under the proposed regulations, the Secretary would review annually a representative sample of the IHE drug prevention programs. If an IHE is selected as part of a representative sample for review of its program, the proposed regulations state that the IHE would be required to provide the Secretary with access to personnel, records and information. Such access is necessary for the Secretary to carry out the Secretary's statutory responsibility to review IHE programs.

The statute also requires an IHE that has submitted the certification to make available, upon request, to the Secretary and the public, a copy of each item in the program required by the statute and the results of the IHE's biennial review.

Subpart C—State and Local Educational Agencies

Subpart C of the proposed regulations implements the statutory requirements that govern the nature of the drug prevention program for all students and employees that an SEA or LEA must implement, the review of SEA and LEA drug prevention programs, and the information that such agency must make available to the Secretary and the public.

With respect to an SEA's or LEA's drug prevention program for students, the statute requires that the program, at a minimum, include—

- Age-appropriate, developmentally based drug and alcohol education and prevention programs for all students in all grade levels from early childhood through grade 12.
- A statement to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful.
- Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as a part of any of the school's activities.
- A clear statement that disciplinary sanctions, up to and including expulsion and referral for prosecution, will be imposed if the standards of conduct are violated, and a description of those sanctions.
- Information about any available drug and alcohol counseling, rehabilitation, and re-entry programs.
- A requirement that parents and students be given a copy of the standards of conduct and the statement of disciplinary sanctions.
- A requirement that parents and students be notified that compliance with the standards of conduct is mandatory.

With respect to an SEA's or LEA's program for employees, the statute requires that the program, at a minimum, include—

- Standards of conduct that clearly prohibit the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as a part of any of the school's activities.
- A clear statement that disciplinary sanctions up to and including termination of employment and referral for prosecution will be imposed on employees who violate the standards of conduct, and a description of those sanctions.
- Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to employees.
- A requirement that employees be given a copy of the standards of conduct and the statement of disciplinary sanctions.
- A requirement that employees be notified that compliance with the standards of conduct is mandatory.

Under the statute, SEAs and LEAs are required to conduct a biennial review of their programs to determine their effectiveness, ensure that the disciplinary sanctions are consistently enforced, and implement changes if they are needed. The statute requires SEAs to review periodically a representative sample of LEA programs. The proposed regulations would implement this requirement by providing that the SEA review annually a representative sample of LEA programs. The Secretary believes that an annual review is necessary to ensure that the purposes of the statute are being carried out effectively. If an SEA found as a result of that review that an LEA had failed to implement its program or consistently enforce its disciplinary sanctions, the SEA would be required, under the proposed regulations, to submit that information to the Secretary so that the Secretary could take appropriate action under the statute. The proposed regulations include the statutory requirement that SEAs and LEAs make available a copy of each item in the program required by the statute and the results of the biennial review. The proposed regulations also contain requirements concerning access to personnel and records and information, comparable to the statutory and regulatory requirements applicable to IHEs described above.

Subpart D—Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA of This Part

Under the statute and proposed regulations, an IHE, SEA, or LEA might violate this part in two ways. The first is by receiving any form of Federal financial assistance after October 1, 1990 without having submitted the required certification or obtaining an extension of time from the Secretary for submitting the certification. The second is by violating the drug prevention program certification. A violation of a certification may include the failure to adopt or implement a drug prevention program or to ensure disciplinary sanctions consistently. The Secretary will act expeditiously upon receipt of any information indicating that a violation may have occurred.

If an IHE, SEA, or LEA commits a violation, the statute authorizes the Secretary to issue or impose a range of "responses" and sanctions. The statute provides that the responses to be issued by the Secretary may include information and technical assistance, as well as the formulation of a compliance agreement. Under the statute and proposed regulations, the responses are not, however, limited to these specific

mechanisms. Other types of responses could also be issued by the Secretary.

The proposed regulations provide that if the Secretary intends to issue a response other than information or technical assistance or the formulation of a compliance agreement, the Secretary would provide written notification to the IHE, SEA, or LEA in question. Before issuing a final response, the Secretary would consider written comments from the IHE, SEA, or LEA.

Certain responses issued by the Secretary may require that corrective action be taken by the IHE, SEA, or LEA. In this event, the proposed regulations provide that the IHE, SEA, or LEA would be required to inform the Secretary of the corrective actions taken to comply with the response within the period specified by the Secretary.

In accordance with the statute, the proposed regulations provide that the Secretary would also be authorized to impose one or more sanctions. The statute authorizes the Secretary to impose a range of sanctions, and the proposed regulations provide that sanctions may include repayment of any or all Federal financial assistance received without having submitted the drug prevention program certification or received during the period an IHE, SEA, or LEA was in violation of its certification and termination of any or all forms of Federal financial assistance. The Secretary will coordinate closely with other Federal agencies which are providing financial assistance that would be subject to a sanction imposed by the Secretary.

Under the proposed regulations, a proceeding to demand repayment of Federal financial assistance or to terminate the eligibility of an IHE, SEA, or LEA for such assistance begins with a notice from a designated Department of Education official informing the IHE, SEA, or LEA of the nature of the violation, the intended sanction, and the IHE's, SEA's or LEA's right to request a hearing or submit written material. If the IHE, SEA, or LEA requests a hearing, repayment would not be required or termination would not be effective until the hearing has been completed and a decision issued. If the IHE, SEA, or LEA submits written material without requesting a hearing, the designated Department official, after considering the material, would notify the IHE, SEA, or LEA whether assistance must be repaid or whether the termination was dismissed or imposed.

Subpart E—Appeal Procedures

Subpart E of the proposed regulations sets forth the exclusive procedures governing the appeal of any decision by a designated Department official to demand repayment or terminate eligibility under this part. Any challenge to a determination under this part must be brought under subpart E of these regulations, notwithstanding other hearing procedures that otherwise might apply, e.g., hearing procedures for Impact Aid in 34 CFR part 218, Student Financial Assistance in 34 CFR part 668, and General Education Provisions Act Enforcement in 34 CFR part 81. The proposed regulations incorporate certain statutory requirements governing the filing of an appeal and the timing of a hearing, and are otherwise modeled on existing procedural regulations that currently apply to IHEs, SEAs, and LEAs with respect to other types of proceedings.

It should be recognized that if an IHE, SEA, or LEA fails to submit the certification required by the statute and the regulations, the IHE, SEA, or LEA is automatically *ineligible* for Federal financial assistance. Accordingly, no provision is made in the proposed regulations for hearing procedures incident to a determination of ineligibility for failure to submit the certification. The hearing procedures set forth in Subpart E of the proposed regulations would apply only where termination of assistance was proposed as a sanction for an IHE's, SEA's, or LEA's failure to comply with a certification or where the IHE, SEA, or LEA was asked to repay funds.

Under the procedures set forth in subpart E of the proposed regulations, an administrative law judge (ALJ) would hear appeals. The proposed regulations would authorize the ALJ to regulate the course of the proceeding and the conduct of the parties and would otherwise set forth the authority and responsibility of the ALJ. The ALJ would not be authorized to issue subpoenas. Under the proposed regulations, the scope of the ALJ's review would be limited to determining whether the IHE, SEA, or LEA received any form of Federal financial assistance without having submitted a certification or the IHE, SEA, or LEA violated its certification.

The proposed regulations would also govern who may be a party in a hearing under subpart E, ensure that a party may be represented by counsel, and specify how a party may communicate with an ALJ. The proposed regulations provide that the ALJ must, if requested by a joint motion of the parties, grant a stay of the proceedings either for settlement negotiations or for the parties to obtain the approval of a settlement agreement.

The proposed regulations describe the procedures for conducting a hearing on the record. An ALJ would conduct the hearing entirely on the basis of briefs and other written submissions unless the ALJ determined that an evidentiary hearing was needed to resolve a material factual issue in dispute or that oral argument was needed to clarify the issues. The ALJ could not order discovery or exchange of documents or information between the parties; however, the parties could agree to reasonable exchanges of information. The designated Department official would have the burden of persuasion in any proceeding under subpart E.

The proposed regulations set forth the procedures for the issuance of a decision. The ALJ would be required to issue a written decision to the IHE, SEA, or LEA and the designated Department official within the indicated time frame. The ALJ's decision would be required to state whether the violation or violations contained in the Secretary's notification occurred and to articulate the reasons for the ALJ's finding. The ALJ's decision would be the final decision of the agency unless the Secretary, on his or her own initiative or on request by either party, reviewed the decision.

With respect to review by the Secretary, the proposed regulations provide that the Secretary's decision may affirm, modify, reverse, or remand the ALJ's decision and must include a statement of reasons for the decision.

Under the proposed regulations, an IHE, SEA, or LEA whose eligibility to receive Federal financial assistance had been terminated would be authorized to file with the Department a request for reinstatement as an eligible entity no earlier than 18 months after the effective date of the termination.

Secretarial Review of Administrative Law Judge Decision.

The following paragraphs discuss an issue of statutory interpretation raised by the proposed regulations that warrants particular consideration. As added by section 22 of the Amendments, both section 1213(d) of the Higher Education Act of 1965 and section 5145(e) of the Drug-Free Schools and Communities Act of 1986 provide for an opportunity for a hearing before an ALJ when the Secretary decides to terminate Federal financial assistance to an IHE or LEA. Both provisions also provide that "[t]he decision of the (administrative law) judge with respect to such termination shall be considered to be a final agency action." Read literally, this statement would appear to preclude the Secretary from reviewing the decision of

the ALJ or from having an input in the final agency action. On the other hand, the statement can also be read to mean no more than that the decision of the ALJ, as affirmed or modified by the Secretary as appropriate, is a final agency action that is reviewable by the courts, by implication leaving the normal opportunity for Secretarial review of such decisions. The legislative history available does not help to interpret this provision. For several reasons, the Secretary has adopted the second interpretation.

First, it seems clear from the face of the statute that Congress intended to confer upon the Secretary a broad measure of discretion in fashioning enforcement procedures. It seems very unlikely that the relatively sparse language of section 1213(d) and section 5145(e) relating to the right to a hearing before an ALJ in certain instances was intended by Congress to be a complete statement of the rules governing the conduct of such hearings. On the contrary, the brevity of the language invites the conclusion that Congress intended those hearings to be conducted in a manner that is consistent with the Department's current practices relating to the authority of ALJs, as well as the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Interpreting section 1213 and section 5145, however, to prohibit Secretarial review of ALJ decisions would have no precedent within the Department and would sharply conflict with the roles of the Secretary and ALJ in other departmental hearing contexts. In addition, the Administrative Procedure Act contemplates agency review of recommended or initial decisions by ALJs.

Second, if the decisions of ALJs with respect to termination hearings under these provisions of the Higher Education Act and the Drug-Free Schools and Communities Act may not be reviewed by the Secretary, it is difficult to see how the administration of those statutes are "under the supervision and direction" of the Secretary within the meaning of section 201 of the Department of Education Organization Act, 20 U.S.C. 3411. Clearly the Secretary could not ensure consistent interpretation of the law, or even correct manifestly erroneous interpretations.

Finally, prohibiting Secretarial review of ALJ decisions under section 1213(d) and section 5145(e) would raise serious constitutional difficulties under the "Appointments Clause", Art. II, section 2, cl. 2, governing the appointment of "Officers" of the United States. Only such officers—appointed by the President with the advice and consent of the Senate—may "exercis[e] significant authority pursuant to the laws of the United States." *Buckley* v. *Valeo*, 424 U.S. 1, 126 (1976). For example, a decision to terminate an IHE or LEA—an action requiring both an interpretation of the law and its application to the facts of the case—would plainly be an important exercise of the Executive Branch's constitutional responsibility to faithfully execute the laws of the United States. ("Interpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law." *Bowsher* v. *Synar*, 478 U.S. 714, 733 (1986).) An ALJ, while an employee of the Executive Branch, is not an Officer of the United States in the constitutional sense and therefore may not be vested with unreviewable executive branch authority to terminate an IHE or LEA.

Executive Order 12291

The proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

States and State agencies are not small entities under the Regulatory Flexibility Act. The small entities affected by these regulations are small IHEs and small LEAs receiving funds or any other form of financial assistance under a Federal program. These regulations implement new statutory requirements established as a condition for receiving Federal financial assistance. The regulations will not have a significant economic impact on the small entities affected.

Paperwork Reduction Act of 1980

Sections 86.3, 86.4, 86.6, 86.100, 86.102, 86.103, 86.200, 86.201, 86.202, 86.203, and 86.204 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget for its review (44 U.S.C. 3504(h)).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

Intergovernmental Review

Some of the programs affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 4126, 400 Maryland Avenue SW. (FOB-6), Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burden found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 86

Drug abuse, Education, Elementary and secondary education, grant programs—education, Postsecondary education, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: April 19, 1990.

Lauro F. Cavazos,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 86, to read as follows:

PART 86—DRUG-FREE SCHOOLS AND CAMPUSES

Subpart A—General

Subpart B—Institutions of Higher Education

Subpart C—State and Local Educational Agencies

Subpart D—Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

Subpart E—Appeal Procedures

Authority: 20 U.S.C. 1145g, 3224a.

Subpart A—General

§ 86.1 What is the purpose of the Drug-Free Schools and Campuses Regulations?

The purpose of the Drug-Free Schools and Campuses Regulations is to implement section 22 of the Drug-Free Schools and Communities Act Amendments of 1989, which adds section 1213 to the Higher Education Act and section 5145 to the Drug-Free Schools and Communities Act. These amendments require that, as a condition of receiving funds or any other form of financial assistance under any Federal program, an institution of higher education (IHE), State educational agency (SEA), or local educational agency (LEA) must certify that it has adopted and implemented a drug prevention program as described in this part.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.2 What Federal programs are covered by this part?

The Federal programs covered by this part include—

(a) All programs administered by the Department of Education under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance; and

(b) All programs administered by any other Federal agency under which an IHE, SEA, or LEA may receive funds or any other form of Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.3 What actions shall an IHE, SEA, or LEA take to comply with the requirements of this part?

(a) An IHE, SEA, or LEA shall adopt and implement a drug prevention program as described in § 86.100 for IHEs, and §§ 86.200 and 86.201 for SEAs and LEAs, to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by all students and employees on school premises or as part of any of its activities.

(b) An IHE, SEA, or LEA shall provide a written certification that it has adopted and implemented the drug prevention program described in § 86.100 for IHEs, and §§ 86.200 and 86.201 for SEAs and LEAs.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.4 What are the procedures for submitting a drug prevention program certification?

(a) *IHE drug prevention program certification.* An IHE shall submit to the Secretary the drug prevention program certification required by § 86.3(b).

(b) *SEA drug prevention program certification.* An SEA shall submit to the Secretary the drug prevention program certification required by § 86.3(b).

(c) *LEA drug prevention program certification.* (1) The SEA shall develop a drug prevention program certification form and a schedule for submission of the certification by each LEA within its jurisdiction.

(2) An LEA shall submit to the SEA the drug prevention program certification required by § 86.3(b).

(3)(i) The SEA shall provide to the Secretary a list of LEAs that have not submitted drug prevention program certifications and certify that all other LEAs in the State have submitted drug prevention program certifications to the SEA.

(ii) The SEA shall submit updates to the Secretary so that the list of LEAs described in paragraph (c)(3)(i) of this section is accurate at all times.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.5 What are the consequences if an IHE, SEA, or LEA fails to submit a drug prevention program certification?

(a) An IHE, SEA, or LEA that fails to submit a drug prevention program certification is not eligible to receive funds or any other form of financial assistance under any Federal program.

(b) The effect of loss of eligibility to receive funds or any other form of Federal financial assistance is determined by the statute and regulations governing the Federal programs under which an IHE, SEA, or LEA receives or desires to receive assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.6 When must an IHE, SEA, or LEA submit a drug prevention program certification?

(a) After October 1, 1990, except as provided in paragraph (b) of this section, an IHE, SEA, or LEA is not eligible to receive funds or any other form of financial assistance under any Federal program until the IHE, SEA, or LEA has submitted a drug prevention program certification.

(b) (1) The Secretary may allow an IHE, SEA, or LEA until not later than April 1, 1991, to submit the drug prevention program certification, only if the IHE, SEA, or LEA establishes that it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(2) An IHE, SEA, or LEA that wants to receive an extension of time to submit its drug prevention program certification shall submit a written justification to the Secretary that—

(i) Describes each part of its drug prevention program, whether in effect or planned;

(ii) Provides a schedule to complete and implement its drug prevention program; and

(iii) Explains why it has a need, other than administrative convenience, for more time to adopt and implement its drug prevention program.

(3) (i) An IHE or SEA shall submit a request for an extension to the Secretary.

(ii) (A) An LEA shall submit any request for an extension to the SEA.

(B) The SEA shall transmit any such request for an extension to the Secretary.

(C) The SEA may include with the LEA's request a recommendation as to whether the Secretary should approve it.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.7 What definitions apply to this part?

(a) *Definitions in the Drug-Free Schools and Communities Act.* The following terms used in this part are defined in the Act:

Drug abuse education and prevention
Illicit drug use

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR part 77:

Department
EDGAR
Local educational agency
Secretary
State educational agency

(c) *Other definitions.* The following terms used in this part are defined as follows:

Compliance agreement means an agreement between the Secretary and an IHE, SEA, or LEA that is not in full compliance with its drug prevention program certification. The agreement specifies the steps the IHE, SEA, or LEA will take to comply fully with its drug prevention program certification, and provides a schedule for the accomplishment of those steps. A compliance agreement does not excuse or remedy past violations of this part.

Institution of higher education means—

(1) An institution of higher education, as defined in 34 CFR 600.4;

(2) A proprietary institution of higher education, as defined in 34 CFR 600.5;

(3) A postsecondary vocational institution, as defined in 34 CFR 600.6; and

(4) A vocational school, as defined in 34 CFR 600.7.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart B—Institutions of Higher Education

§ 86.100 What must the IHE's drug prevention program include?

The IHE's drug prevention program must, at a minimum, include the following:

(a) The annual distribution in writing to each student, regardless of the length of the student's program of study, and employee of—

(1) Standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part of any of its activities;

(2) A description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol;

(3) A description of the health risks associated with the use of illicit drugs and the abuse of alcohol;

(4) A description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and

(5) A clear statement that the IHE will impose disciplinary sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct required by paragraph (a)(1) of this section. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(b) A biennial review by the IHE of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (a)(5) of this section are consistently enforced

(Authority: 20 U.S.C. 1145g)

§ 86.101 What review of IHE drug prevention programs does the Secretary conduct?

The Secretary annually reviews a representative sample of IHE drug prevention programs.

(Authority: 20 U.S.C. 1145g)

§ 86.102 What is required of an IHE that the Secretary selects for annual review?

If the Secretary selects an IHE for review under § 86.101, the IHE shall provide the Secretary access to personnel, records, documents and any other necessary information requested by the Secretary to review the IHE's adoption and implementation of its drug prevention program.

(Authority: 20 U.S.C. 1145g)

§ 86.103 What records and information must an IHE make available to the Secretary and the public concerning its drug prevention program?

(a) Each IHE that provides the drug prevention program certification required by § 86.3(b) shall, upon request, make available to the Secretary and the public a copy of each item required by § 86.100(a) as well as the results of the biennial review required by § 86.100(b).

(b)(1) An IHE shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraph (a) of this section.

(ii) Any other records reasonably related to the IHE's compliance with the drug prevention program certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the IHE shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Authority: 20 U.S.C. 1145g)

Subpart C—State and Local Educational Agencies

§ 86.200 What must the SEA's and LEA's drug prevention program for students include?

The SEA's and LEA's program for all students must, at a minimum, include the following:

(a) Age-appropriate, developmentally based drug and alcohol education and prevention programs (which address the legal, social, and health consequences of drug and alcohol use and which provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol) for all students in all grades of the schools operated or served by the SEA or LEA, from early childhood level through grade 12.

(b) A statement to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful.

(c) Standards of conduct that are applicable to students in all the SEA's and LEA's schools and that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students on school premises or as part of any of its activities.

(d) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law), up to and including expulsion and referral for prosecution, will be imposed on students who violate the standards of conduct required by paragraph (c) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(e) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to students.

(f) A requirement that all parents and students be given a copy of the standards of conduct required by paragraph (c) of this section and the statement of disciplinary sanctions described in paragraph (d) of this section.

(g) Notification to parents and students that compliance with the standards of conduct required by paragraph (c) of this section is mandatory.

(h) A biennial review by the SEA or LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (d) of this section are consistently enforced.

(Authority: 20 U.S.C. 3224a)

§ 86.201 What must the SEA's and LEA's drug prevention program for employees include?

The SEA's and LEA's program for all employees must, at a minimum, include the following:

(a) Standards of conduct applicable to employees that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as part of any of its activities.

(b) A clear statement that disciplinary sanctions (consistent with local, State, and Federal law) up to and including termination of employment and referral for prosecution, will be imposed on employees who violate the standards of conduct required by paragraph (a) of this section and a description of those sanctions. For the purpose of this section, a disciplinary sanction may include the completion of an appropriate rehabilitation program.

(c) Information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to employees.

(d) A requirement that employees be given a copy of the standards of conduct required by paragraph (a) of this section and the statement of disciplinary sanctions described in paragraph (b) of this section.

(e) Notification to employees that compliance with the standards of conduct required by paragraph (a) of this section is mandatory.

(f) A biennial review by the SEA and LEA of its program to—

(1) Determine its effectiveness and implement changes to the program if they are needed; and

(2) Ensure that the disciplinary sanctions described in paragraph (b) of this section are consistently enforced.

(Authority: 20 U.S.C. 3224a)

§ 86.202 What review of SEA and LEA drug prevention programs is required under this subpart?

(a) (1) An SEA shall annually review a representative sample of LEA programs.

(2) If an SEA finds, as as result of its annual review, that an LEA has failed to implement its program or consistently enforce its disciplinary sanctions, the SEA shall submit that information, along with the findings of its review, to the Secretary within thirty (30) days after completion of the review.

(b) The Secretary may annually select a representative sample of SEA programs for review.

(Authority: 20 U.S.C. 3224a)

§ 86.203 What is required of an SEA or LEA that is selected for review?

(a) If the Secretary selects an SEA for review under § 86.202(b), the SEA shall provide the Secretary access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(b) If the SEA selects an LEA for review under § 86.202(a), the LEA shall provide the SEA access to personnel, records, documents, and any other information necessary to review the adoption and implementation of its drug prevention program.

(Authority: 20 U.S.C. 3224a)

§ 86.204 What records and information must an SEA or LEA make available to the Secretary and the public concerning its drug prevention program?

(a) (1) Each SEA that provides the drug prevention program certification shall, upon request, make available to the Secretary and the public full information about the elements of its drug prevention program, including the results of its biennial review required by §§ 86.200(h) and 86.201(f).

(2) The SEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the SEA's compliance with the certification.

(b) (1) Each LEA that provides the drug prevention program certification shall, upon request, make available to the Secretary, the SEA, and the public full information about the elements of its program, including the results of its biennial review required by §§ 86.200(h) and 86.201(f).

(2) The LEA that provides the drug prevention program certification shall provide the Secretary access to personnel, records, documents, and any other information related to the LEA's compliance with the certification.

(c) (1) Each SEA or LEA shall retain the following records for three years after the fiscal year in which the record was created:

(i) The items described in paragraphs (a) and (b) of this section.

(ii) Any other records related to the SEA's or LEA's compliance with the certification.

(2) If any litigation, claim, negotiation, audit, review, or other action involving the records has been started before expiration of the three-year period, the SEA or LEA shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the regular three-year period, whichever is later.

(Authority: 20 U.S.C. 3224a)

Subpart D—Responses and Sanctions Issued or Imposed by the Secretary for Violations by an IHE, SEA, or LEA

§ 86.300 What constitutes a violation of this part by an IHE, SEA, or LEA?

An IHE, SEA, or LEA violates this part by—

(a) Receiving any form of Federal financial assistance after becoming

ineligible to receive that assistance because of failure to submit a certification in accordance with § 86.3(b); or

(b) Violating its certification. Violation of a certification includes failure of an IHE, SEA, or LEA to—

(1) Adopt or implement its drug prevention program; or

(2) Consistently enforce its disciplinary sanctions for violations by students and employees of the standards of conduct adopted by an IHE under § 86.100(a)(1) or by an SEA or LEA under §§ 86.200(c) and 86.201(a).

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.301 What actions may the Secretary take if an IHE, SEA, or LEA violates this part?

(a) If an IHE, SEA, or LEA violates its certification, the Secretary may issue a response to the IHE, SEA, or LEA. A response may include, but is not limited to—

(1) Provision of information and technical assistance; and

(2) Formulation of a compliance agreement designed to bring the IHE, SEA, or LEA into full compliance with this part as soon as feasible.

(b) If an IHE, SEA, or LEA receives any form of Federal financial assistance without having submitted a certification or violates its certification, the Secretary may impose one or more sanctions on the IHE, SEA, or LEA, including—

(1) Repayment of any or all forms of Federal financial assistance received by the IHE, SEA, or LEA when it was in violation of this part; and

(2) The termination of any or all forms of Federal financial assistance that—

(i) (A) Except as specified in paragraph (b)(2)(ii) of this section, ends an IHE's, SEA's, or LEA's eligibility to receive any or all forms of Federal financial assistance. The Secretary specifies which forms of Federal financial assistance would be affected; and

(B) Prohibits an IHE, SEA, or LEA from making any new obligations against Federal funds; and

(ii) For purposes of an IHE's participation in the student financial assistance programs authorized by title IV of the Higher Education Act of 1965 as amended, has the same effect as a termination under 34 CFR 668.94.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.302 What are the procedures used by the Secretary for providing information or technical assistance?

(a) The Secretary provides information or technical assistance to an IHE, SEA, or LEA in writing, through site visits, or by other means.

(b) The IHE, SEA, or LEA shall inform the Secretary of any corrective action it has taken within a period specified by the Secretary.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.303 What are the procedures used by the Secretary for issuing a response other than the formulation of a compliance agreement or the provision of information or technical assistance?

(a) If the Secretary intends to issue a response other than the formulation of a compliance agreement or the provision of information or technical assistance, the Secretary notifies the IHE, SEA, or LEA in writing of—

(1) The Secretary's determination that there are grounds to issue a response other than the formulation of a compliance agreement or providing information or technical assistance; and

(2) The response the Secretary intends to issue.

(b) An IHE, SEA, or LEA may submit written comments to the Secretary on the determination under paragraph (a)(1) of this section and the intended response under paragraph (a)(2) of this section within 30 days after the date the IHE, SEA, or LEA receives the notification of the Secretary's intent to issue a response.

(c) Based on the initial notification and the written comments of the IHE, SEA, or LEA, the Secretary makes a final determination and, if appropriate, issues a final response.

(d) The IHE, SEA, or LEA shall inform the Secretary of the corrective action it has taken in order to comply with the terms of the Secretary's response within a period specified by the Secretary.

(e) If an IHE, SEA, or LEA does not comply with the terms of a response issued by the Secretary, the Secretary may issue an additional response or impose a sanction on the IHE, SEA, or LEA in accordance with the procedures in § 86.304.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.304 What are the procedures used by the Secretary to demand repayment of Federal financial assistance or terminate an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance?

(a) A designated Department official begins a proceeding for repayment of Federal financial assistance or termination, or both, of an IHE's, SEA's, or LEA's eligibility for any or all forms of Federal financial assistance by sending the IHE, SEA, or LEA a notice by certified mail with return receipt requested. This notice—

(1) Informs the IHE, SEA, or LEA of the Secretary's intent to demand repayment of Federal financial assistance or to terminate, describes the consequences of that action, and identifies the alleged violations that constitute the basis for the action;

(2) Specifies, as appropriate—

(i) The amount of Federal financial assistance that must be repaid and the date by which the IHE, SEA, or LEA must repay the funds; and

(ii) The proposed effective date of the termination, which must be at least 30 days after the date of receipt of the notice of intent; and

(3) Informs the IHE, SEA, or LEA that the repayment of Federal financial assistance will not be required or that the termination will not be effective on the date specified in the notice if the designated Department official receives, within a 30-day period beginning on the date the IHE, SEA, or LEA receives the notice of intent described in this paragraph—

(i) Written material indicating why the repayment of Federal financial assistance or termination should not take place; or

(ii) A request for a hearing that contains a concise statement of disputed issues of law and fact, the IHE's, SEA's or LEA's position with respect to these issues, and, if appropriate, a description of which Federal financial assistance the IHE, SEA, or LEA contends need not be repaid.

(b) If the IHE, SEA, or LEA does not request a hearing but submits written material—

(1) The IHE, SEA, or LEA receives no additional opportunity to request or receive a hearing; and

(2) The designated Department official, after considering the written material, notifies the IHE, SEA, or LEA in writing whether—

(i) Any or all of the Federal financial assistance must be repaid; or

(ii) The proposed termination is dismissed or imposed as of a specified date.

(Authority: 20 U.S.C. 1145g, 3224a)

Subpart E—Appeal Procedures

§ 86.400 What is the scope of this subpart?

(a)(1) The procedures in this subpart are the exclusive procedures governing appeals of decisions by a designated Department official to demand the repayment of Federal financial assistance or terminate the eligibility of an IHE, SEA, or LEA to receive some or all forms of Federal financial assistance for violations of this part.

(b) An administrative law judge (ALJ) hears appeals under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.401 What are the authority and responsibility of the ALJ?

(a) The ALJ regulates the course of the proceeding and conduct of the parties during the hearing and takes all steps necessary to conduct a fair and impartial proceeding.

(b) The ALJ is not authorized to issue subpoenas.

(c) The ALJ takes whatever measures are appropriate to expedite the proceeding. These measures may include, but are not limited to—

(1) Scheduling of conferences;

(2) Setting time limits for hearings and submission of written documents; and

(3) Terminating the hearing and issuing a decision against a party if that party does not meet those time limits.

(d) The scope of the ALJ's review is limited to determining whether—

(1) The IHE, SEA, or LEA received any form of Federal financial assistance after becoming ineligible to receive that assistance because of failure to submit a certification; or

(2) The IHE, SEA, or LEA violated its certification

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.402 Who may be a party in a hearing under this subpart?

(a) Only the designated Department official and the IHE, SEA, or LEA that is the subject of the proposed termination or recovery of Federal financial assistance may be parties in a hearing under this subpart.

(b) Except as provided in this subpart, no person or organization other than a party may participate in a hearing under this subpart.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.403 May a party be represented by counsel?

A party may be represented by counsel.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.404 How may a party communicate with an ALJ?

(a) A party may not communicate with an ALJ on any fact at issue in the case or on any matter relevant to the merits of the case unless the other party is given notice and an opportunity to participate.

(b)(1) To obtain an order or ruling from an ALJ, a party shall make a motion to the ALJ.

(2) Except for a request for an extension of time, a motion must be made in writing unless the parties appear in person or participate in a conference telephone call. The ALJ may require a party to reduce an oral motion to writing.

(3) If a party files a written motion, the party shall do so in accordance with § 86.405.

(4) Except for a request for an extension of time, the ALJ may not grant a party's written motion without the consent of the other party unless the other party has had at least 21 days from the date of service of the motion to respond. However, the ALJ may deny a motion without awaiting a response.

(5) The date of service of a motion is determined by the standards for determining a filing date in § 86.405(d).

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.405 What are the requirements for filing written submissions?

(a) Any written submission under this subpart must be filed by hand-delivery or by mail through the U.S. Postal Service.

(b) If a party files a brief or other document, the party shall serve a copy of the filed material on the other party on the filing date by hand-delivery or by mail.

(c) Any written submission must be accompanied by a statement certifying the date that the filed material was filed and served on the other party.

(d)(1) The filing date for a written submission is either—

(i) The date of hand-delivery; or

(ii) The date of mailing.

(2) If a scheduled filing date falls on a Saturday, Sunday, or Federal holiday, the filing deadline is the next Federal business day.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.406 What must the ALJ do if the parties enter settlement negotiations?

(a) If the parties to a case file a joint motion requesting a stay of the proceedings for settlement negotiations or for the parties to obtain approval of a settlement agreement, the ALJ grants the stay.

(b) The following are not admissible in any proceeding under this part:

(1) Evidence of conduct during settlement negotiations.

(2) Statements made during settlement negotiations.

(3) Terms of settlement offers.

(c) The parties may not disclose the contents of settlement negotiations to the ALJ. If the parties enter into a settlement agreement and file a joint motion to dismiss the case, the ALJ grants the motion.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.407 What are the procedures for scheduling a hearing?

(a) If the IHE, SEA, or LEA requests a hearing by the time specified in § 86.304(a)(3), the designated Department official sets the date and the place.

(b)(1) The date is at least 15 days after the designated Department official receives the request and no later than 45 days after the request for hearing is received by the Department.

(2) On the motion of either or both parties, the ALJ may extend the period before the hearing is scheduled beyond the 45 days specified in paragraph (b)(1) of this section.

(c) No termination takes effect until after a hearing is held and a decision is issued by the Department.

(d) With the approval of the ALJ and the consent of the designated Department official and the IHE, SEA, or LEA, any time schedule specified in this section may be shortened.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.408 What are the procedures for conducting a pre-hearing conference?

(a)(1) A pre-hearing conference may be convened by the ALJ if the ALJ thinks that such a conference would be useful, or if requested by—

(i) The designated Department official; or

(ii) The IHE, SEA, or LEA.

(2) The purpose of a pre-hearing conference is to allow the parties to settle, narrow, or clarify the dispute.

(b) A pre-hearing conference may consist of—

(1) A conference telephone call;

(2) An informal meeting; or

(3) The submission and exchange of written material.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.409 What are the procedures for conducting a hearing on the record?

(a) A hearing on the record is an orderly presentation of arguments and evidence conducted by an ALJ.

(b) An ALJ conducts the hearing entirely on the basis of briefs and other written submissions unless—

(1) The ALJ determines, after reviewing all appropriate submissions, that an evidentiary hearing is needed to resolve a material factual issue in dispute; or

(2) The ALJ determines, after reviewing all appropriate submissions, that oral argument is needed to clarify the issues in the case.

(c) The hearing process may be expedited as agreed by the ALJ, the designated Department official, and the IHE, SEA, or LEA. Procedures to expedite may include, but are not limited to, the following:

(1) A restriction on the number or length of submissions.

(2) The conduct of the hearing by telephone conference call.

(3) A review limited to the written record.

(4) A certification by the parties to facts and legal authorities not in dispute.

(d)(1) The formal rules of evidence and procedures applicable to proceedings in a court of law are not applicable.

(2) The designated Department official has the burden of persuasion in any proceeding under this subpart.

(3)(i) The parties may agree to exchange relevant documents and information.

(ii) The ALJ may not order discovery, as provided for under the Federal Rules of Civil Procedure, or any other exchange between the parties of documents or information.

(4) The ALJ accepts only evidence that is relevant and material to the proceeding and is not unduly reptitious.

(e) The ALJ makes a transcribed record of any evidentiary hearing or oral argument that is held, and makes the record available to—

(1) The designated Department official; and

(2) The IHE, SEA, or LEA on its request and upon payment of a fee comparable to that prescribed under the Department of Education Freedom of Information Act regulations (34 CFR part 5).

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.410 What are the procedures for issuance of a decision?

(a)(1) The ALJ issues a written decision to the IHE, SEA, or LEA, the designated Department official, and the Secretary by certified mail, return receipt requested, within 30 days after—

(i) The last brief is filed;

(ii) The last day of the hearing if one is held; or

(iii) The date on which the ALJ terminates the hearing in accordance with § 86.401(c)(3).

(2) The ALJ's decision states whether the violation or violations contained in the Secretary's notification occurred, and articulates the reasons for the ALJ's finding.

(3) The ALJ bases findings of fact only on evidence in the hearing record and on matters given judicial notice.

(b)(1) The ALJ's decision is the final decision of the agency unless the Secretary on his or her own initiative or on request by either party reviews the decision.

(2) If the Secretary decides to review the decision on his or her own initiative, the Secretary informs the parties of his or her intention to review by written notice sent within 15 days of the Secretary's receipt of the ALJ's decision.

(c)(1) Either party may request review by the Secretary by submitting a brief or written materials to the Secretary within 20 days of the party's receipt of the ALJ's decision. The submission must explain why the decision of the ALJ should be modified, reversed, or remanded. The other party shall respond within 20 days of receipt of the brief or written materials filed by the opposing party.

(2) Neither party may introduce new evidence on review.

(d) The decision of the ALJ ordering the repayment of Federal financial assistance or terminating the eligibility of an IHE, SEA, or LEA does not take effect pending the Secretary's review.

(e)(1) The Secretary reviews the ALJ's decision considering only evidence introduced into the record.

(2) The Secretary's decision may affirm, modify, reverse or remand the ALJ's decision and includes a statement of reasons for the decision.

(Authority: 20 U.S.C. 1145g, 3224a)

§ 86.411 What are the procedures for requesting reinstatement of eligibility?

(a) An IHE, SEA, or LEA whose eligibility to receive any or all forms of Federal financial assistance has been terminated may file with the Department a request for reinstatement as an eligible entity no earlier than 18 months after the effective date of the termination.

(b) In addition to the requirements of paragraph (a) of this section, the IHE, SEA, or LEA shall comply with the requirements and procedures for reinstatement of eligibility applicable to any Federal program under which it desires to receive Federal financial assistance.

(Authority: 20 U.S.C. 1145g, 3224a)

BILLING CODE 4000-01-M

NOTE: This Appendix will not be codified in the Code of Federal Regulations.

APPENDIX A

This certification, as required by Section 5145 of the Drug-Free Schools and Communities Act, as added by Section 22 of the Drug-Free Schools and Communities Act Amendments of 1989 (P.L. 101-226), must be submitted to the Secretary of the U.S. Department of Education in order for the State educational agency to be eligible to receive funds or any other form of financial assistance under any Federal program after October 1, 1990.

Drug Prevention Program Certification
State Educational Agencies

The undersigned certifies that it has adopted and has implemented a drug prevention program for its students and employees that, at a minimum, includes --

(1) for students:

- o age-appropriate, developmentally based drug and alcohol education and prevention programs (which address the legal, social, and health consequences of drug and alcohol use and which provide information about effective techniques for resisting peer pressure to use illicit drugs or alcohol) for all students in all grades of the schools operated or served by the SEA, from early childhood level through grade 12.

- o a statement to students that the use of illicit drugs and the unlawful possession and use of alcohol is wrong and harmful.

- o standards of conduct that are applicable to students in all the SEA's schools and that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students on school premises or as part of any of its activities.

- a clear statement that disciplinary sanctions (consistent with local, State, and Federal law), up to and including expulsion and referral for prosecution, will be imposed on students who violate the standards of conduct, and a description of those sanctions. A disciplinary sanction may include the completion of an appropriate rehabilitation program.

- information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to students.

- a requirement that parents and students be given a copy of the standards of conduct and the statement of disciplinary sanctions required.

- notification to parents and students that compliance with the standards of conduct is mandatory.

(2) for employees:

- standards of conduct applicable to employees that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol on school premises or as part of any of its activities.

- a clear statement that disciplinary sanctions (consistent with local, State, and Federal law) up to and including termination of employment and referral for prosecution, will be imposed on employees who violate the standards of conduct, and a description of those sanctions. A disciplinary sanction may include the completion of an appropriate rehabilitation program.

- information about any drug and alcohol counseling and rehabilitation and re-entry programs that are available to employees.

- a requirement that employees be given a copy of the standards of conduct and the statement of disciplinary sanctions required.

NOTE: This Appendix will not be codified in the Code of Federal Regulations.

APPENDIX B

State educational agencies must submit this certification in order for the local educational agencies to receive funds or any other form of financial assistance under any Federal program. In addition, State educational agencies have a continuing responsibility to update this certification so that it remains accurate at all times.

Drug Prevention Program Certification
Local Educational Agencies

The undersigned certifies that, except for the local educational agencies listed below, drug prevention program certifications have been received from all local educational agencies in the State.

LOCAL EDUCATIONAL AGENCY	IRS EMPLOYER IDENTIFICATION NUMBER	NAME OF SUPERINTENDENT AND LEA ADDRESS

State Educational Agency

Typed Name and title of Chief State School Officer

Signature of the Chief State School Officer

Date

o notification to employees that compliance with the standards of conduct required is mandatory.

(3) for both student and employee drug prevention programs:

o a biennial review by the SEA of its programs to --

(a) determine the programs' effectiveness and implement changes to the programs if they are needed; and

(b) ensure that disciplinary sanctions are consistently enforced.

State Educational Agency

Typed name and Title of Chief State School Officer

IRS Employer Identification Number

Signature of the Chief State School Officer

Date

NOTE: This Appendix will not be codified in the Code of Federal Regulations.

APPENDIX C

This certification, as required by Section 1213 of the Higher Education Act of 1965, as added by Section 22 of the Drug Free Schools and Communities Amendments of 1989 (Public Law 101-226), must be submitted to the Secretary of the U.S. Department of Education in order for the institution of higher education to be eligible to receive funds or any other form of financial assistance under any Federal program after October 1, 1990.

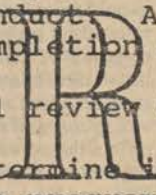
Drug Prevention Program Certification
Institutions of Higher Education

The undersigned certifies that it has adopted and implemented a drug prevention program for its students and employees that, at a minimum, includes --

(1) the annual distribution in writing to each student regardless of the length of the student's program of study, and employee of:

- standards of conduct that clearly prohibit, at a minimum, the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on its property or as part any of its activities.
- a description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol.
- a description of the health risks associated with the use of illicit drugs and the abuse of alcohol.

- a description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students.
- a clear statement that the institution will impose disciplinary sanctions on students and employees (consistent with local, State and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct. A disciplinary sanction may include the completion of an appropriate rehabilitation program.



(2) a biennial review by the institution of its program to:

- determine its effectiveness and implement changes to the program if they are needed.
- ensure that its disciplinary sanctions are consistently enforced.

Institution

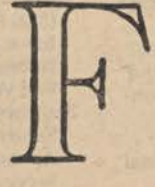
IRS Employer Identification Number

Typed Name of Chief Executive Officer

( ) Telephone Number

Signature of the Chief Executive Officer

Date



BILLING CODE 4000-01-C

Note: This Appendix will not be codified in the Code of Federal Regulations.

Appendix D—Questions and Answers

1. *Question:* What is the relationship between the requirements in the Drug-Free Workplace Act and the certification requirement in these regulations?

Answer: The Drug-Free Workplace Act of 1988 was enacted as subtitle D of title V of the Anti-Drug Abuse Act of 1988, Public Law 100–690. Section 5153 of the Drug-Free Workplace Act prohibits any Federal Department or agency from making a grant to any institutional grantee unless the grantee submits a certification, in the terms set forth in that section, that it will provide a drug-free workplace. The same section also prohibits any Federal Department or agency from making a grant to an individual in the absence of a required certification. Interim final regulations for the Drug-Free Workplace Act were issued by Federal agencies on January 31, 1989 (54 FR 4946).

The certification requirement in these regulations applies only to IHEs, SEAs, and LEAs. The certification requirement in the Drug-Free Workplace Act applies to all recipients of Federal grants, including individuals.

Under the Drug-Free Workplace Act, the certification submitted by a grantee (other than an individual) relates to the drug-free character of the grantee's workplace and thus pertains only to its employees. Employee use of alcohol is not addressed in the Drug-Free Workplace Act. On the other hand, the certification under these regulations relates to the agency's or institution's students and employees and must address the unlawful use of alcohol as well as drugs.

Under the Drug-Free Workplace Act, the certification must be submitted only by an entity or individual that receives a grant directly from the Federal government; the certification is not required of subgrantees or subcontractors. Under these regulations the certification requirements apply whether the agency or institution is applying directly to the Federal government or is applying for a subgrant or subcontract from a grantee that has received a Federal grant, such as an LEA applying for Federal funds to an SEA.

2. *Question:* What resources for technical assistance are available to IHEs, SEAs, and LEAs who must implement drug prevention programs and policies under these regulations?

Answer: Available resources for technical assistance include—

- *The National Institute on Drug Abuse Hotline*, 1–800–662–HELP, an information and referral line that directs callers to treatment centers in the local community;
- *The National Institute on Drug Abuse Workplace Helpline*, 1–800–843–4971, a line that provides information about workplace programs and drug testing;
- *The National Clearinghouse for Alcohol and Drug Information*, 1–301–468–2600, an information and referral service that distributes Department of Education publications about drug and alcohol prevention programs, as well as material from other Federal agencies;
- *The Network of Colleges and Universities Committed to the Elimination of Drug and Alcohol Abuse*, 1–202–357–6206, was established in 1987 as a joint effort of the U.S. Department of Education and the higher education community for the purpose of developing an institutional response to the alcohol and other drug problems on campuses. As a means of self regulation, some 1,300 schools have adopted a set of standards that were developed by the Network and reviewed, modified and affirmed by the U.S. Department of Education. The Standards are designed to serve as a guide for institutions that are developing policies, education programs, assessment techniques and enforcement procedures aimed at eradicating alcohol and other drug abuse on campuses, and may serve as a useful starting point for developing alcohol and other drug prevention programs that comply with these regulations. A copy of the Standards can be received by writing to the Network at the U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, DC 20208–5644. Information can also be provided about training and conferencing activities and newly formed regional networks;
- *Department of Education Regional Centers Drug-Free Schools and Communities*, assist the IHEs, SEAs, and LEAs in developing prevention programs by providing training and technical assistance. Addresses for the five centers are listed below.

Northeast Regional Center for Drug-Free Schools and Communities, 12 Overton Avenue, Sayville, NY 11782–0403, (516) 589–7022, serving Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont;

Southeast Regional Center for Drug-Free Schools and Communities, The Hurt Building, 50 Hurt Plaza, Suite 210, Atlanta, Georgia 30303, (404) 688–9227, serving Alabama, District of Columbia, Florida, Georgia, Kentucky, North Carolina, Puerto Rico, South Carolina, Tennessee, Virginia, Virgin Islands, and West Virginia;

Midwest Regional Center for Drug-Free Schools and Communities, 2001 N. Clybourn, Suite 302, Chicago, IL 60614, (312) 883–8888, serving Indiana, Illinois, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin;

Southwest Regional Center for Drug-Free Schools and Communities, 555 Constitution Avenue, Norman, OK 73037, (405) 325–1454, serving Arizona, Arkansas, Colorado, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, and Utah; and

Western Regional Center for Drug-Free Schools and Communities, 101 SW. Main Street, Suite 500, Portland, OR 92704, (503) 275–9476 ((800) 547–6339 outside Oregon), serving Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Republic of Palau, Washington, and Wyoming.

3. *Question:* The regulations require certifying IHEs, SEAs, and LEAs to enforce consistently their disciplinary sanctions on students and employees who violate the institution's standards of conduct. Must institutions impose identical disciplinary sanctions on each offender, or may the sanctions be varied in light of individual circumstances?

Answer: The Secretary believes that the firm but fair imposition of disciplinary sanctions upon students and employees who violate institutional standards of conduct relating to drug and alcohol use is essential to maintaining an appropriate learning environment and to achieving the congressional intent of drug-free campuses and a drug-free society. The regulations require IHEs, SEAs, and LEAs to develop and circulate a clear description of what disciplinary sanctions they will impose upon students and employees who violate the standards of conduct, up to and including expulsion or termination of employment and referral for prosecution. Within these few constraints, IHEs, SEAs, and LEAs have broad discretion to establish disciplinary sanctions that are appropriate for particular violations, and may tailor their sanctions to reflect the severity of the violation. The regulations do require, however, that the IHE, SEA, or LEA consistently apply those disciplinary sanctions that it, as a matter of policy, adopts.

4. *Question:* Must IHEs, SEAs, and LEAs distribute the standards of conduct, statement of sanctions, and other documents required by the regulations to their students and employees before October 1, 1990?

Answer: Yes, if feasible. The Secretary believes that Congress intended the drug prevention programs and policies required by the regulations to be in effect for school year 1990–91. It should be noted that the drug prevention program certification states that the IHE, SEA, or LEA "has adopted and has implemented" its drug prevention program. Distribution of required documents is a discrete task that can be accomplished by that date. In addition, the beginning of the school year, when students and employees are returning to school or campus, is an effective time to inform these individuals of the IHE's, SEA's or LEA's drug prevention program.

5. *Question:* The regulations provide that the Secretary may grant an IHE, SEA, or LEA an extension of time until not later than April 1, 1991, to submit a drug prevention program certification. The regulations state that an IHE, SEA, or LEA must explain why it has a need, other than administrative convenience, for more time. What is meant by administrative convenience?

Answer: The Secretary anticipates granting few extensions of time to submit a drug prevention program certification. The Drug-Free Schools and Communities Act Amendments of 1989 were enacted in December 1989, and the statutory language regarding the rquired prevention programs is clear. An IHE, SEA, or LEA that requests an extension of time, therefore, must base its justification on reasons other than administrative convenience. Below are examples of administrative convenience that generally would be considered insufficient to warrant an extension of time:

- renegotiation of employment contracts;
- staff turnover or changes in institutional leadership;

- vacation or recess;
- the need to make significant changes in policy or procedures;
- protracted procedures for adopting programs and policies; and
- the need to obtain information about available counseling and rehabilitation programs.

6. *Question:* Do the standards of conduct required by the regulations apply to off-campus activities?

Answer: The regulations state that the standards of conduct must prohibit, at a minimum, the unlawful possession, use or distribution of illicit drugs and alcohol by students and employees on school premises or property "*or as part of any of its activities.*" (Emphasis added.) Thus, to the extent that off-campus activities are considered to be school activities, the standards of conduct must apply to them. Programs conducted on non-traditional campuses, such as correctional institutions, are also covered by the regulations. Employees of institutions that offer educational programs conducted by correspondence are covered by the regulations, and students are covered to the extent that they participate in a residential component of the program, if any.

7. *Question:* Under what circumstances would an SEA be required to have a drug prevention program for students?

Answer: If an SEA operates a school that is not considered an LEA under State law, such as a school for the deaf, a school for children of Federal employees, or an educational program in an institution for incarcerated youth, it would be required to have a drug prevention program for students attending that school or education program.

8. *Question:* If an agency or institution other than an IHE, SEA, or LEA operates a school, must it establish a drug prevention program and submit a certification?

Answer: No. The drug prevention program and certification requirements in these regulations apply only to IHEs, SEAs, and LEAs.

9. *Question:* The regulations require SEAs to review annually a "representative sample" of LEA drug prevention programs. How many programs must be reviewed each year?

Answer: The Secretary does not believe it is necessary or appropriate to establish rigid numbers or percentages of LEAs that must be reviewed annually. SEAs are in the best position to appreciate the variety of LEAs in the State, and their individual characteristics and needs for assistance in combatting illicit drugs and alcohol. However, SEAs must conduct sufficient reviews of a variety of LEAs so that at any time after October 1, 1991, the SEA has an accurate assessment of the effectiveness of the drug prevention programs conducted by the LEAs in that State.

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DEPARTMENT OF EDUCATION

Office of the Secretary

Drug Prevention Program Certification; Submission Date; and Extension of Time To Adapt and Implement Program; Deadline Date

AGENCY: Department of Education.

ACTION: Notice of suggested date for submitting a drug prevention program certification and deadline date to request an extension of time to adopt and implement a drug prevention program.

SUMMARY: The Secretary of Education announces a suggested date for an institution of higher education (IHE) or State educational agency (SEA) to submit its drug prevention program certification in order to ensure that the IHE's or SEA's receipt of Federal funds is not interrupted. The Secretary also announces the deadline date for an IHE, SEA, or LEA to request an extension of time from October 1, 1990, until no later than April 1, 1991, to adopt and implement a drug prevention program. LEA requests for extensions should be submitted through the SEA. The Secretary anticipates granting very few extensions of time to submit a drug prevention program certification.

DATES: The Secretary establishes September 4, 1990, as the suggested date for IHEs and SEAs to submit the drug prevention program certification to the Department. The deadline date for IHEs, SEAs, and LEAs to request an extension of time from October 1, 1990, until no later than April 1, 1991, to adopt and implement a drug prevention program is August 1, 1990.

ADDRESSES: An IHE or SEA should mail its drug prevention program certification and must mail any request for an extension, including, in the case of an SEA, any request by an LEA for an extension, on or before the dates specified in this Notice to: U.S. Department of Education, 400 Maryland Avenue SW., room 4126, Washington, DC 20202–0499, Attention: Drug-Free Schools and Campuses Task Force.

FOR FURTHER INFORMATION CONTACT: Drug-Free Schools and Campuses Task Force, U.S. Department of Education, room 4126, 400 Maryland Avenue SW., Washington, DC 20202–0499.

SUPPLEMENTARY INFORMATION: On December 12, 1989, the President signed the Drug-Free Schools and Communities Act Amendments of 1989, Public Law 101–226, which amends the Drug-Free Schools and Communities Act of 1986 and the Higher Education Act of 1965 to require that, as a condition of receiving funds or any other form of financial assistance under any Federal program after October 1, 1990, an IHE, SEA, or LEA must submit a certification that it has adopted and implemented a drug prevention program. Proposed Drug-Free Schools and Campuses regulations to implement these statutory requirements are published in this issue of the **Federal Register.**

IHEs and SEAs must submit drug prevention program certifications to the Secretary; LEAs must submit certifications to the SEA. IHEs and SEAs are encouraged to submit certifications to the Secretary by September 4, 1990, so that there will be sufficient time to process the certifications and so that there will be no interruption in the flow of Federal financial assistance. SEAs are encouraged to establish a date prior to September 4, 1990, for LEAs to submit certifications to the SEA.

The statute authorizes the Secretary to grant an extension, until no later than April 1, 1991, of the October 1, 1990, certification date.

The proposed Drug-Free Schools and Campuses regulations specify, in § 86.6(b), the criteria the Secretary proposes to use in deciding whether to grant requests for extensions. Section 86.6(b) describes the information an IHE, SEA, or LEA must submit in order to request an extension of time, which can be no later than April 1, 1991, to submit a drug prevention program certification. IHEs, SEAs, and LEAs are encouraged to prepare their requests for extensions on the basis of this provision in the proposed regulations.

The deadline date for requesting an extension of time to adopt and implement a drug prevention program is August 1, 1990. IHEs, SEAs, and LEAs must submit requests for extensions to the Secretary by that date. LEA requests for extensions should be submitted through the SEA.

SEAs should establish a date prior to August 1, 1990, for LEAs to submit requests for extensions to the SEA so that the SEA will be able to transmit those requests to the Secretary by the deadline of August 1, 1990. Requests for extensions from IHEs, SEAs, or LEAs received by the Secretary after August 1 will not be considered.

Authority: 20 U.S.C. 1145g, 3224a.

Dated: April 19, 1990.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 90–9536 Filed 4–23–90; 8:45 am]

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federal register

Tuesday
April 24, 1990

Part VII

Evironmental Protection Agency

Carpet Response to Citizens' Petition; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-211027; FRL 3739-8]

Carpet: Response to Citizens' Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Response to Citizens' Petition.

SUMMARY: On January 11, 1990, the National Federation of Federal Employees (NFFE), Local 2050, petitioned EPA under section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620, to initiate rulemaking proceedings, under sections 4, 6 and 8 of TSCA, 15 U.S.C. 2603, 2605, and 2607, to reduce emissions from new carpets. EPA has decided not to initiate the specific rulemaking proceedings requested by NFFE because the Agency disagrees with the specific assertions regarding the health risk posed by carpeting and with the remedies sought.

However, EPA is concerned that volatile compounds from installation of new carpeting may significantly increase indoor air exposures to such compounds. Therefore, this notice describes the Agency's decision to initiate a series of actions designed to assess and, if necessary, reduce the public's exposure to compounds which may off-gas from carpeting.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Rm. E-543B , 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION:

I. Summary of Response

EPA has found that there are insufficient data to support the conclusions and remedies requested by NFFE. The Agency, however, believes that an absence of scientific certainty does not necessarily mean an absence of risk and that efforts to better characterize carpet emissions, and potential health effects which may be associated with carpeting, as well as other indoor exposure sources, should be continued and expanded.

In addition, the Agency recognizes that new carpet may be a significant source of human exposure to low levels of volatile organic compounds (VOCs). As a matter of policy, the Agency believes it is prudent to minimize indoor human exposure to these chemicals where reasonable and that efforts on the part of manufacturers to reduce product emissions should be strongly encouraged.

In light of these findings, the Agency is taking three major initiatives. First, the Agency is formally requesting that the carpeting industry undertake a voluntary program to conduct periodic total VOC analyses on a company-by-company and product-by-product basis to provide the interested public with comparative information on total VOC emissions. Second, the Agency is inviting all interested parties to participate in a 1-year dialogue process designed to work out the details of the voluntary testing program mentioned above and to explore and, where possible, reach agreement on a variety of issues including: the sampling and analytical methods for the voluntary testing, any additional information needed, and cost-effective process changes to reduce emissions. Further, details on the dialogue process are discussed in Unit IV of this notice. Thirdly, the Agency will continue its on-going exposure reduction and research activities on indoor air quality issues generally and on the potential health effects of exposure to low level VOC mixtures, in particular.

A concurrent effort will be initiated to assess the feasibility of prospective epidemiology studies to determine the response characteristics of individuals exposed to carpet emissions.

II. Background

A. Statutory Requirements

1. *TSCA in general.* Section 21 of TSCA provides that any person may petition EPA to initiate proceedings for the issuance of rules under sections 4, 6 and 8 of TSCA.

Under section 4 EPA may issue rules to require chemical manufacturers and processors to test their chemicals. To issue a section 4 rule on a chemical, EPA must find either that activities involving the chemical may present an unreasonable risk of injury to health or the environment, or that the chemical will be produced in amounts that may cause significant or substantial human exposure or substantial environmental release. In addition, EPA must find that existing data are insufficient to determine or predict the effects of the chemical and that testing is necessary to develop that data.

Under section 6 EPA may promulgate rules to control a chemical if the Agency finds there is a reasonable basis to conclude that activities involving the chemical present or will present an unreasonable risk of injury to health or the environment.

Under section 8 EPA may issue rules to require chemical manufacturers and processors to gather, retain and report existing information, as may be reasonably required. This information includes production and use information, health and safety studies, and allegations of adverse reactions.

2. *TSCA section 21.* A section 21 petition must set forth the facts which establish the need for the rules requested. EPA is required to grant or deny the petition within 90 days. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons in the **Federal Register.**

Within 60 days of denial, the petitioner may commence a civil action in a U.S. district court to compel the initiation of the rulemaking requested in its petition. The court must, for a petition for a new rule, provide the opportunity for the petition to be considered *de novo.*

After hearing the evidence, the court can order EPA to initiate the action requested if the petitioner has demonstrated, by a preponderance of the evidence, support for particular conclusions described in section 21. The petitioner must support different conclusions for section 4 petitions than for section 6 or 8 petitions.

In the case of a section 21 petition for a section 4 rule, the petitioner must demonstrate support for the conclusion that (1) information is insufficient to permit a reasoned evaluation of the effects of a chemical and (2) the chemical either may present an unreasonable risk or will be produced in substantial amounts and may result in significant or substantial human exposure or substantial environmental release.

In the case of a section 21 petition for a section 6 or 8 rule, the petitioner must demonstrate support for the conclusion that there is a reasonable basis that rules are "necessary" to protect against "unreasonable risk."

B. Assertions of Petitioner

NFFE petitioned EPA to initiate proceedings for a number of immediately effective rules to control exposure to the chemical substance 4-phenylcyclohexene (4-PC), an inadvertent byproduct of the manufacture of styrene-butadiene latex (SB latex) used in carpet manufacturing, as well as other chemicals emitted by new carpeting.

NFFE asserts that immediately effective rules are needed to protect against alleged adverse health effects described by NFFE as "multiple chemical sensitivity" (MCS) and "acute irritancy response" (AIR). NFFE claims

that MCS and AIR result from exposure to 4-PC emitted from SB latex in "bad" batches of carpets. The chemical 4-PC is likely produced at the initial polymerization stage of SB latex.

NFFE supports this contention by citing a surge in illness complaints among EPA employees following carpet installation in 1987–88 at the EPA headquarters building in Washington, D.C. NFFE claims that 4-PC is the single common emission product from these carpets and that similar complaints have been made by persons exposed to SB latex and not carpets. In addition, NFFE asserts that animal studies link 4-PC with adverse health effects.

NFFE maintains that this evidence provides a reasonable basis for the initiation of action under TSCA, arguing that it is not necessary to show 4-PC is the only cause of injury or to know the precise mechanism by which the adverse health effects occur.

NFFE further asserts that it might be inexpensive to reduce 4-PC levels in the initial production of SB latex or its subsequent processing. NFFE concludes that this remedy is justified on the basis of its probable low economic consequence compared to the severity of the life-altering human health effects asserted in the petition.

C. Remedies Sought

EPA is requested to initiate the following specific regulatory actions:

1. *Section 4.* NFFE requests that EPA promulgate rules to generate information elucidating the mechanism of action for 4-PC and other chemicals emitted from certain carpeting through specific testing including: (1) A case-control epidemiology study, (2) *in vitro* studies of the reactivity of 4-PC and its epoxide derivative with cellular proteins and DNA and like studies of the ability of 4-PC to affect certain enzyme levels in living cells, and (3) whole animal studies related to the *in vitro* studies on 4-PC and carpet off-gassing chemicals (effects on enzyme levels, immune system marker chemicals and neurotransmitter substances).

2. *Section 6.* NFFE requests that EPA promulgate immediately effective rules under section 6 to establish 4-PC indoor air level standards of 5 parts per trillion (ppt) to protect against MCS and 17 ppt to protect against AIR, and to require manufacturers to buy back carpets which would cause these levels to be exceeded. NFFE also requests EPA to issue an immediately effective order under section 6(b) to require manufacturers to remedy quality control procedures, notify the public of the health risks, and require the carpet buy-backs discussed above.

NFFE requests that testing be conducted to determine what levels of 4-PC in carpets would cause these indoor air level standards to be exceeded. Although NFFE characterizes this testing requirement as a rule under TSCA section 6, EPA believes that such requirement is more appropriately characterized as a rule under TSCA section 4.

3. *Section 8.* NFFE requests that EPA promulgate immediately effective rules: (1) Under section 8(a) to require manufacturers, processors and distributors to report amounts of SB latex manufactured and its uses; (2) under section 8(c) to require manufacturers to maintain and present for inspection records of allegations of adverse health effects related to exposure to 4-PC or mixtures containing 4-PC; and (3) under section 8(d) to require manufacturers to submit lists of health and safety studies on 4-PC or mixtures containing 4-PC and to submit health and safety studies on 4-PC in their possession.

4. *Other remedy requested.* NFFE requests that EPA develop and issue a "Chemical Advisory" directed to building managers regarding exposure to volatile chemicals in carpeting, particularly 4-PC, and the hazard to those persons apparently experiencing MCS. This remedy is not petitionable under TSCA.

III. Evaluation of the Petition

A. Legal Standards

Section 21, itself, does not specifically state the criteria under which EPA should decide whether to grant or deny a citizens' petition. Section 21 merely states that EPA must grant or deny within 90 days.

However, there are standards under sections 4, 6 and 8 for issuing regulations, and there are standards imposed on the court for deciding whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a section 21 petition. EPA has examined these standards, summarized in Unit II.A. of this notice, as the basis for evaluating NFFE's petition. Following is a discussion of how these standards apply to evaluation of the NFFE petition.

1. *Legal standards regarding testing rules.* With respect to NFFE's request for initiating testing rules under section 4, EPA considered the legal standards found in both section 4 and section 21. Some standards contained in these sections are essentially the same. For example, under section 4, EPA may issue a rule to require testing if it finds that data on a chemical are insufficient to evaluate its effects, and that the chemical may present an unreasonable risk of injury or is produced in substantial quantities, and either may result in significant or substantial human exposure, or may result in substantial environmental release. Section 21 allows a court to order EPA to initiate rulemaking if it makes, essentially, the same determination after a *de novo* review of the petition.

Three criteria are relevant to evaluating these standards for this petition: (1) Sufficiency of data, (2) unreasonable risk and (3) significant or substantial exposure. Decisionmaking under each of these criteria depends on the particular facts involved in any particular case and involves significant judgment on the part of the decisionmaker—EPA or a court. The unreasonable risk criterion, however, requires elaboration because it is a general standard that applies to both section 4 and section 6. This elaboration appears later in this Unit.

EPA applied another standard to its evaluation of NFFE's request for testing rules not found in section 21, but only found in section 4. Under section 4, EPA must find that testing is necessary to develop the data needed for evaluating a chemical before it may issue a testing rule. Under this requirement, EPA needs to consider such issues as whether there is a testing method that can be expected to develop useful data or whether there are other means of obtaining data without resorting to testing.

2. *Legal standards regarding control rules.* In evaluating NFFE's request for rules under section 6 to control chemicals, EPA assessed whether such rules are necessary to protect against unreasonable risk. This is the same test the court would apply under section 21. The test has two aspects. First, there must be an "unreasonable risk" of injury against which protection is needed. Second, TSCA rules must be "necessary" to protect against that risk.

EPA interprets the standard that rules are "necessary" to require consideration of whether TSCA rules are the appropriate remedy to protect against the risk described. For example, regulations under other Federal statutes, whether administered by EPA or other agencies, may be more appropriate than TSCA rules. Another consideration may be whether State or local initiatives constitute the appropriate remedy instead of Federal rules.

3. *Unreasonable risk.* Unreasonable risk is the basic regulatory standard under TSCA. It applies to rules under both section 4 and section 6, and to judicial decisions on section 21

petitions. The importance of the unreasonable risk standard to TSCA decisionmaking requires that the standard be given special explanation.

The finding of unreasonable risk is a judgment under which the decisionmaker determines that the risk of health or environmental injury from a chemical outweighs the burden to society of potential regulations. The section 4 requirement that EPA must find that a chemical "may" present an unreasonable risk requires less information on risk than the section 6 requirement to find that a chemical "will" present an unreasonable risk.

This concept is discussed in the legislative history of TSCA. The House Report notes that risk is measured by elements of probability of harm and severity of harm that may vary in relation to each other, and that the regulatory effect will be of greater significance in making an unreasonable risk determination if greater restrictions are imposed by regulation (H.R. Rep. 94–1341, 94th Cong., 2d Sess., pages 14 and 15). Thus, to impose regulations banning a chemical, for example, and thereby imposing a significant burden on society, the decisionmaker would need considerable information on toxicity and exposure. On the other hand, the decisionmaker would need less information on risk if the regulation were only a testing requirement that would not, by itself, result in the loss of benefits of the chemical to society.

In practical application, an unreasonable risk decision cannot be made considering risk alone. Rather, the probability of harm must be considered against the impacts of regulation. Thus, if exposure to a chemical is low and extremely high burdens would be incurred to achieve small incremental risk reduction, a decisionmaker might not find the risk unreasonable. On the other hand, an unreasonable risk may be found if the evidence on the risk asserted is marginal but the impact of regulation is low. Thus, the identified risk may justify the minimal costs of a testing rule or a labelling requirement, but would not justify the costs of more restrictive measures.

These considerations are especially relevant in the case of the NFFE petition.

B. Evaluation of NFFE's Assertions

EPA disagrees with NFFE that the health problems cited in the petition are likely caused by 4-PC exposure, or even that the petition identifies human disease conditions (MCS) that the medical community generally recognizes or for which there are evaluation techniques. Instead, NFFE's risk case is entirely based on the presence of 4-PC at the site of complaints about non-specific health effects.

EPA recognizes that certain individuals may have adverse reactions from exposure to indoor air contaminants. However, EPA's evaluation of 4-PC shows no evidence of such toxicity and, indeed, shows that it is an unremarkable chemical. There are no clinical studies or epidemiology data for 4-PC. Animal studies at dose levels well above those measured or expected at the EPA Headquarters do not indicate acute toxicity or skin sensitization. In addition, no credible physiological or biochemical causal mechanism has been identified to link 4-PC to the effects alleged in the petition. This evidence does not, however, entirely rule out a causal relation of 4-PC to effects on hypersensitive individuals.

NFFE has shown no definitive evidence that persons exposed to SB latex but not to carpet suffer the same complaints as people exposed only to carpet. Furthermore, 4-PC is not the only chemical found at the carpet complaint sites at EPA. Other chemicals, such as toluene, have been found at the same sites. A number of the chemicals found at these sites could produce the same non-specific symptoms that the petitioner attributes to 4-PC. It appears that some persons, NFFE included, may have alleged 4-PC as a cause of adverse effects partly because the odor of the chemical is so readily detectable. It has an extremely low odor threshold, approximately 0.5 parts per billion (ppb).

EPA does not rule out that complaints associated with the installation of carpets could be the result of the complex mixture of off-gassing chemicals, including the VOCs in carpets, padding and installation materials. The composition and concentrations of off-gassing chemicals vary between carpets. The large surface area of carpet compared to the surface areas of other room components might also be responsible for capturing and emitting of contaminants from many other sources.

C. Evaluation of NFFE's Remedies

EPA has determined that NFFE's assertions concerning 4-PC do not support its proposed remedies. The Agency's analysis follows.

1. *Section 4.* EPA has determined that the toxicity testing requested by NFFE is not justified under the legal standards of TSCA and the existing scientific evidence. There are insufficient data to reasonably determine or predict the effects of low levels of 4-PC and other chemicals that may be emitted from carpets. However, the other determinations under sections 4 and 21 cannot be made at this time.

First, EPA is not able to determine that, in the absence of sufficient data, 4-PC either may present an unreasonable risk or is emitted at levels that may cause significant exposure. EPA's evaluation of the available toxicity data, as summarized in Unit III.B. of this notice and as described in more detail in the administrative file prepared for this petition response, shows no particular concern for 4-PC. There is not even an apparent theoretical basis (structure-activity relationship or causal mechanism) that would lead to a significant concern for 4-PC. Thus, exposure to 4-PC off-gassing from carpeting does not appear to be unreasonable or significant, since it is present at such low levels. The low odor threshold of 4-PC is the only apparent reason for indicting the chemical. EPA believes this is not an appropriate reason to require special testing of this chemical.

Second, different considerations apply to the evaluation of exposure to total VOCs emitted from carpeting. The large amounts of new carpet distributed in the U.S. and the large surface area in the indoor environment lead to a concern that there may be substantial exposure to off-gassed chemicals. Thus, EPA believes that it is appropriate that companies test in order to characterize VOC emissions from carpeting products, and will require such testing under section 4 if it cannot be accomplished voluntarily. This testing will help determine if any exposure reduction measures are necessary, as more fully explained below.

Testing might be done either by carpet manufacturers or by raw material suppliers. For example, the Styrene Butadiene Latex Manufacturers Council (SBLMC), a trade association of companies that manufacture SB latex, has told EPA that its member companies have attempted 4-PC reduction over the last 2 years. The SBLMC, however, has not provided data on attempted manufacturing process changes or on levels of 4-PC in individual products. The SBLMC has told EPA that the present average level of 4-PC in SB latex is 123 parts per million (ppm). In a related matter, no information has been collected regarding the 4-PC levels in a related product, styrene-butadiene rubber latex, which is sometimes used to glue down carpets. Also, the Carpet and Rug Institute (CRI), a trade association of carpet manufacturers, has informed EPA of ongoing studies of carpet emissions. Results are expected in the next few months.

Finally, with respect to the potential adverse health effects of total carpet emissions, the studies requested by NFFE are not likely to develop the data needed. Accordingly, EPA has decided to consider whether other studies can be developed to evaluate the potential effects. The mechanistic case-control epidemiological studies requested by NFFE are not appropriate. Case-control studies look at subjects with a well defined disease compared to subjects without the disease to examine the possible similarities in exposures. If the disease is not well-defined, as with the conditions that the petitioner describes as MCS or AIR, epidemiologic studies will not clarify a disease mechanism or etiology. Studies done after the fact of disease cannot assign the presence or levels of enzymes (as the petitioner requested) to particular chemical exposures. EPA believes that it would be more useful to consider a prospective study of several populations, such as those who appear most sensitive to carpets and those who work with carpets directly.

EPA concludes that the animal studies suggested by NFFE would not be useful. NFFE claims that there may be a breakdown in the immune system, and perhaps other systems, of certain sensitive persons caused by exposure to 4-PC and other off-gassing chemicals. However, there is no adequately defined connection between the symptoms reported in humans by NFFE and its requested measurements of: (1) The binding of a chemical to cellular proteins and DNA, (2) enzyme levels, (3) immune system marker chemicals, or (4) neurotransmitter substances.

Changes in the immune system have historically not been shown to be a reliable predictor of the symptoms of concern presented in NFFE's petition. Exploratory research on broad classes of indoor air pollutants is needed to develop such predictive capability. Thus, it is appropriate for the research cost to be borne by a broader segment of society rather than by the carpet industry alone.

2. *Section 6.* Under unreasonable risk standards, EPA does not believe that the health effects evidence on 4-PC justifies immediately effective rules, requirements for indoor air levels in the low part per trillion range (well below current detection limits) or requiring buying back of carpet already installed. Such types of rules are too restrictive, given the paucity of evidence on 4-PC. EPA believes that by focusing on these types of rules for 4-PC, resources would be diverted from potentially more fruitful efforts to address indoor air pollution generally, including carpet emissions. A major problem with NFFE's requested remedies is that resources would be spent on addressing chemicals that may in fact cause no problem. In addition, NFFE's remedies may unfairly indict particular chemicals or a particular industry and could lead to undue public concern.

EPA is willing to consider, however, whether it is possible under unreasonable risk standards to develop cost-effective control steps to reduce levels of all VOCs that may be emitted from carpet, including 4-PC. A good understanding of the effects of complex mixtures, particularly in the case of sensitive individuals, may not be available for a long time. Thus, at least for the near term, further study of the health effects of complex mixtures in indoor air, should not delay efforts to address immediate concerns. EPA, therefore, believes that, until more definitive information is available, the Agency should promote reductions of chemicals emitted from carpets.

3. *Section 8.* The principal issue regarding NFFE's section 8 request is whether to institute rulemaking or obtain the information on a voluntary basis. Much of the information requested by NFFE (i.e. health and safety studies) has already been obtained from industry; industry has also informed EPA of ongoing animal studies. In addition, production data and use information on SB latex have been provided by industry.

The NFFE requested section 8(c) remedy for records retention for SB latex is already established at 40 CFR part 717. The SB latex industry has agreed to provide by May 1990 their existing records regarding adverse reactions allegations associated with SB latex as well as existing health and safety studies on SB latex. There may be little incremental benefit to issuing rules to gather information that industry will provide voluntarily and more quickly than through rulemaking. EPA will consider rules as necessary to obtain information about processing which can help identify appropriate exposure reduction measures.

4. *Chemical advisory.* EPA believes that its present and proposed information dissemination and technical assistance activities already provide an effective means to reach the public regarding health effects information. Furthermore, issuance of a Chemical Advisory is not a petitionable item under section 21.

IV. EPA's Response

The NFFE petition requested that EPA publish a number of immediately effective rules to protect the public from exposure to the compound 4-PC and mixtures containing 4-PC. EPA, however, denies this Section 21 petition because the evidence on the risk from 4-PC and other VOCs does not support the remedies requested.

The Agency, however, recognizes NFFE's concerns and would certainly agree that an absence of scientific certainty does not necessarily mean an absence of risk. In addition, the Agency recognizes that new carpeting can be a source of widespread human exposure to low levels of VOCs. As a matter of policy, the Agency believes it is prudent to minimize indoor human exposure to VOCs and other indoor air contaminants where reasonable and that efforts on the part of manufacturers to reduce product emissions should be strongly encouraged.

In light of these findings, the Agency is taking several steps. First, the Agency is formally requesting that the carpeting industry undertake a voluntary program to conduct periodic total VOC analyses on a company-by-company and product-by-product basis to provide the interested public with comparative information on total VOC emissions. Such a program, which may include labeling of carpet products for total VOC emission, would help to stimulate efforts to lower overall VOC emissions. Second, the Agency is inviting all interested parties to participate in a 1-year public dialogue process (discussed below) to initiate this program. Third, the Agency will also continue its risk management activities and research to identify possible health effects associated with complex air mixtures emitted by carpets and low level VOC exposures. These ongoing activities and planned research under the indoor air program are summarized in Unit V of this notice.

EPA's public dialogue process will continue for approximately 1 year. The Agency will invite interested members of the public to participate. EPA will seek participation by NFFE, the carpeting products industry, consumer/public interest groups, other Federal agencies, and other interested parties. The goal of this dialogue will be to characterize emissions and identify low-impact, feasible VOC controls that could be implemented in the near term, not to further characterize the health effects of chemicals emitted from carpeting.

The specific charges to the participants in the dialogue will be to:

1. Develop standard methodologies for testing carpet emissions and obtain commitments to test carpeting. The Agency will be requesting the carpet

industry to voluntarily commence appropriate periodic testing (probably on a company-by-company, product-by product basis) to quantify the total emissions of VOCs from their products to provide the interested public with comparative information on total VOC emissions from new carpets. Should an acceptable voluntary agreement not be obtained within a reasonable time, the Agency intends to propose a test rule under section 4 of TSCA to compel such testing.

2. Identify information needs for assessment of emission control feasibility, including data on carpet manufacture and installation technology and commercial activities associated with carpet installation. This data development and/or collection could be accomplished either by issuance of rules under TSCA sections 4 or 8, or by voluntary submissions.

3. Evaluate potential controls for reducing emissions, including product and/or emission standards, and labeling of carpet for VOC emissions. These could be accomplished either voluntarily or through low impact TSCA rules. Other appropriate statutes administered by either EPA or other Federal agencies will be considered, as required by section 9 of TSCA. If EPA pursues mandatory control options under TSCA, EPA will be required to make an unreasonable risk finding under section 6.

4. Identify VOC exposures which are associated with carpet installation but not necessarily from a carpet source (adhesives, floor preparation, etc.) and recommend any appropriate actions to reduce them.

A simultaneous effort will be made to assess whether prospective epidemiologic studies can be developed to determine the response characteristics of individuals exposed to carpet emissions and assess whether other health effects studies (e.g. human chamber, *in vitro*, or animal studies) should be performed as methodologies are developed and become available. A prospective epidemiology study would require identification and definition of symptoms of concern, with selection criteria including expressions of symptoms within a specified time after an exposure event. Workable test methods to measure the relevant symptoms would need to be identified. It may take as long as 1 year to determine whether appropriate epidemiology protocols can be developed. If a determination is made that protocols are feasible, EPA will require industry to develop specific test protocols and carry them out.

The administrative actions to establish the dialogue—including meetings, reports, and other pertinent information—will be described in a separate **Federal Register** notice to be issued by June 1, 1990.

V. EPA Indoor Air Program

The issue of carpet emissions and their contribution to adverse health effects has been treated by the Agency as part of the overall indoor air pollution problem. Prior to and independently of the petition, EPA has undertaken a risk management and research program for indoor air pollution as part of its responsibilities under Title IV of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Title IV of SARA mandates a comprehensive indoor air quality research and development program by EPA to identify, characterize, and monitor sources and levels of indoor air pollutants, to develop instruments for indoor air quality data collection, and to identify high risk building types.

This program has two major elements, risk management and research, which are discussed below.

A. Risk Management

The indoor air pollution risk management program undertaken by EPA emphasizes nonregulatory programs of information dissemination, technical assistance, guidance and training to build State and local government and private sector capabilities to address indoor air quality problems. However, the Agency also believes that for identified high priority problems, regulation under available statutes, including the Toxic Substances Control Act, the Federal Insecticide, Fungicide, and Rodenticide Act, and the Safe Drinking Water Act may also be appropriate.

In an effort to disseminate available information on indoor air quality, EPA has published a number of documents on indoor air pollution and its mitigation, including a major "Report to Congress on Indoor Air Quality" (August 1989), a series of fact sheets on indoor air issues, including "Sick Buildings" and "Ventilation and Air Quality in Offices," a "Survey of Private Sector Indoor Air Quality Diagnostic and Mitigation Firms," and several publications dealing with residential indoor air issues.

EPA is currently developing guidance documents directed to specific audiences, such as architects and engineers, building owners and managers, and new home builders and buyers, on the prevention, diagnosis and mitigation of indoor air quality problems in commercial and residential structures. As an example, the guidance document for building owners and managers is designed to be used in assessment programs to identify and correct potential problems, and to manage related indoor air quality problems, through building investigations, employee relations, contracting and mitigation techniques. EPA is also exploring, through a public dialogue process, whether a consensus based credentialing system for private sector indoor air quality diagnosis and mitigation firms is feasible and desirable. In addition, a manual for physicians on the recognition, diagnosis and treatment of illnesses related to indoor air quality will be developed.

EPA is developing a general indoor air quality training program for State and local governments to help them to identify and mitigate indoor air quality problems. In addition, EPA will be developing model State programs for indoor air quality assessment and response.

B. Research

The objective of EPA's indoor air pollution research program is to gain information to reduce exposure to indoor air pollutants known to cause health risks. The first step in achieving this objective is the identification and characterization of the health risks posed by indoor exposures. Once the risks have been adequately characterized, exposure reduction techniques can then be evaluated on the basis of their practicality, cost, and effectiveness.

To characterize pollutants from off-gassing or volatilization that might occur from carpets, wall coverings, paints, and other products, EPA is conducting small chamber testing of the indoor air contribution of construction products. Levels of chemicals that would be expected indoors can then be estimated based on such emissions data, using indoor air models developed by EPA.

EPA is encouraging emissions testing by industry using consensus, verified methods. The American Society for Testing and Materials (ASTM) is currently reviewing an EPA-developed standard small-chamber test method to characterize the complex emissions from products used indoors, such as carpeting. EPA is conducting monitoring and analytical methods research that includes the development and evaluation of personal and micro-environmental monitors to measure pollutants in indoor air, including monitors for semiVOCs and polar organic compounds. This research

includes compiling these methods into a compendium of monitoring and analytical techniques for indoor pollutants, including methods for semi-VOCs and polar organic compounds. EPA is developing exposure assessment techniques for application to large buildings.

EPA is conducting research on the effects of VOC mixtures on neurobehavioral and physiologic effects on humans. EPA is developing a risk assessment methodology to evaluate the human health risks from exposure to indoor air pollution for both cancer and non-cancer endpoints.

To understand the national scope of the indoor air problem, EPA is developing baseline data. EPA is also resolving specific indoor air pollution inquiries and complaints from within EPA. As part of this effort, EPA has been developing and implementing a national Indoor Air Quality and Work Environment Study to be implemented at the EPA's Headquarters facilities, where EPA staff have expressed concerns about indoor air quality. Actions to improve indoor air quality at EPA's facilities are being taken in response to the survey results, and other information.

In addition, EPA is engaging independent experts to assist the Agency in the development of a long-range research strategy relative to MCS with the goal of producing the information necessary for establishing Federal policy on this issue.

EPA is continuing development of risk assessment information and methods for evaluating risks associated with specific sources of indoor air contamination. As part of this process, EPA is co-sponsoring a 3-day technical workshop scheduled for April 17-19, 1990, to address risk assessment methods for indoor air complex chemical mixtures, including carpeting.

VI. Administrative Record

EPA has established a public record of those documents the Agency considered in denying NFFE's petition. The record consists of documents located in the file designated by Docket Control Number, OPTS-211027, located at the TSCA Public Docket Office. This Docket is available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the following address: Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460. The public record consists of all documents in the OPTS-211027 file and all documents cited in the documents in that file.

Dated: April 17, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90-9464 Filed 4-23-90; 8:45 am]

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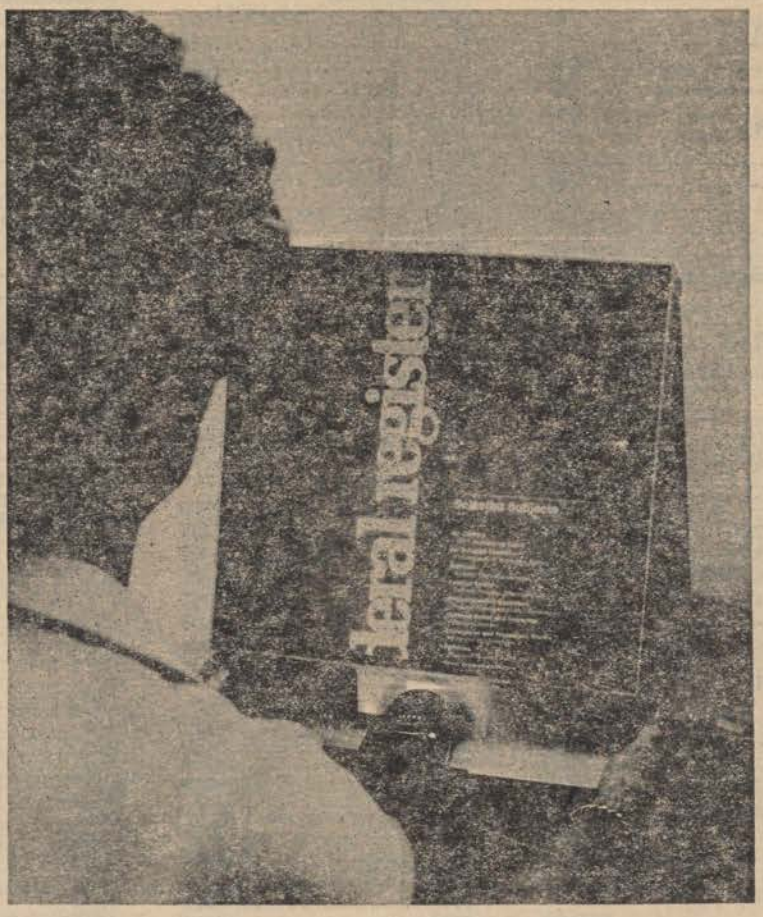

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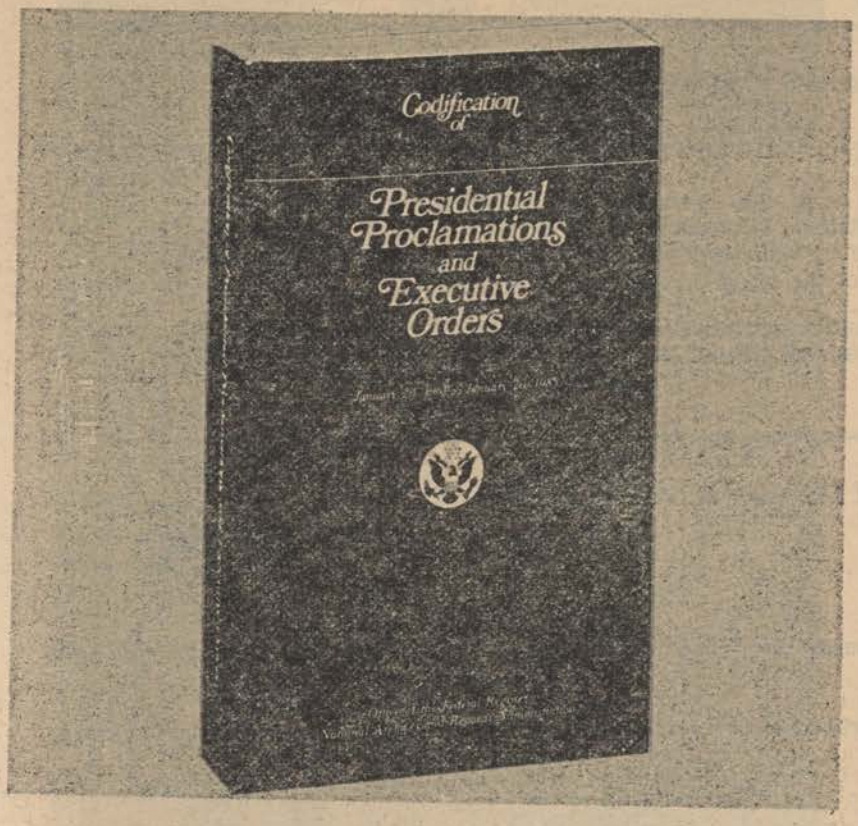

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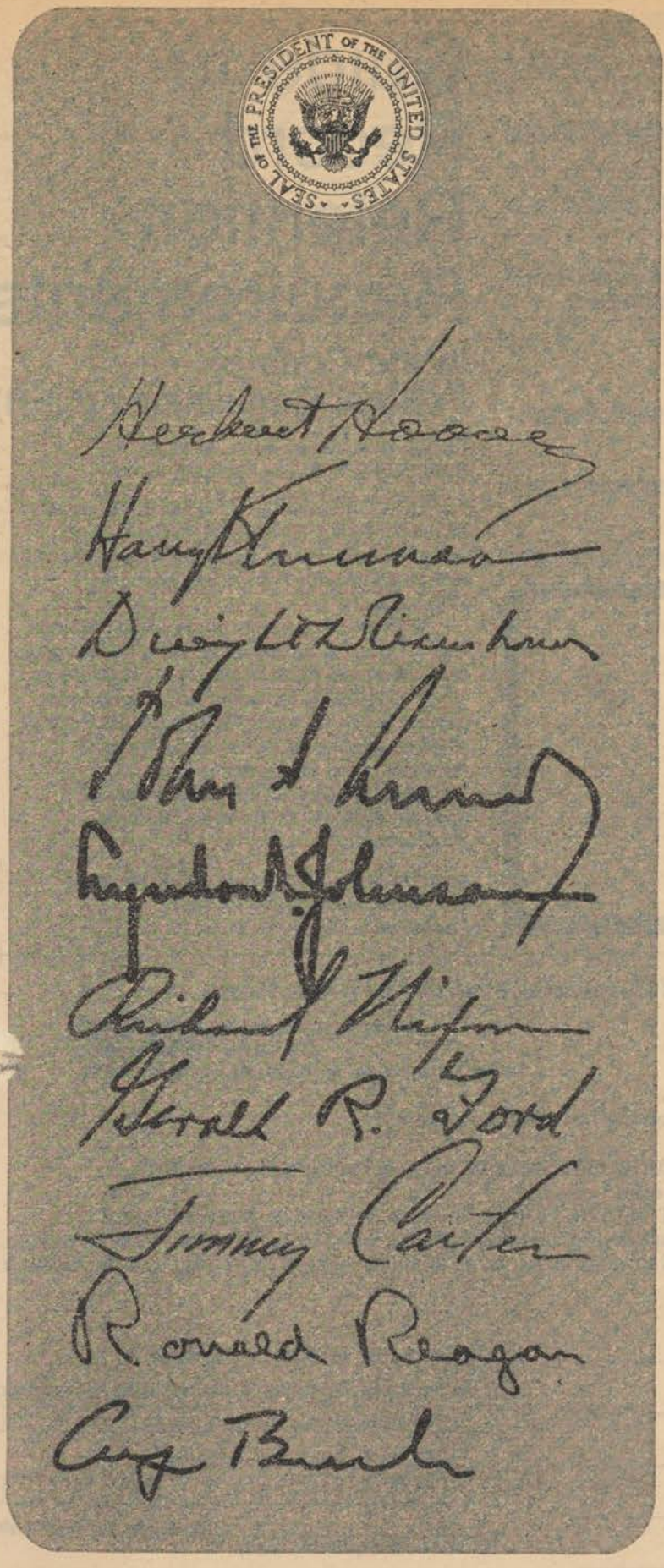

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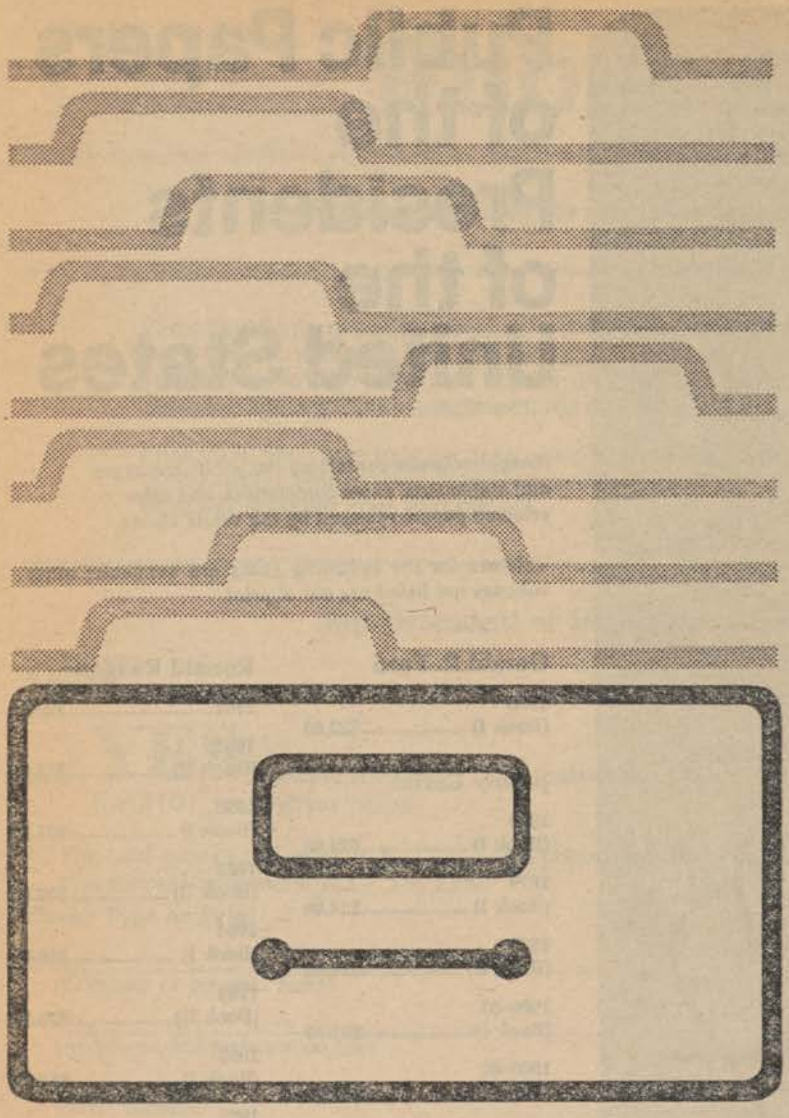

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in the Code of Federal Regulations (CFR)

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